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80-2156
Docket No.

In the Supreme Court of the United States

October Term, 1980

GENERAL DEVELOPMENT & SHIPPING ENTERPRISES CO., LTD.
Petitioner,

v

STEPHEN J. MOREWITZ, etc., et el
Respondent

PETITION FOR WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

John R. Crumpler, Jr.
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936 Wainright Building
Norfolk, Virginia 23510
Attorneys for Petitioner

I.

QUESTIONS PRESENTED

1. Whether the holding that G.D.S.E. was doing business in Virginia so as to subject it to the court's jurisdiction is contrary to World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980) and Hanson v. Denckla, 357 U.S. 235 (1958)?

2. Whether Gulf Oil Co. v. Gilbert, 330 U.S. 501 (1947) applies with equal force to disputes between foreigners?

3. Whether the lower court's refusal to exercise its discretionary power to decline subject matter jurisdiction over suits between foreigners is at odds with Lauritzen v. Larsen, 345 U.S. 571 (1953)?

4. Whether by judicial decree, the courts of the United States should open their doors to all disputes of all peoples of all nations?

5. At least as to the Greek claimants, whether the court should have declined jurisdiction?

II.

LIST OF PARTIES

Pursuant to Rule 21.1(b), Rules of the Supreme Court, counsel for Petitioner certifies that the following is a complete list of all parties to the proceedings below and additionally, all parties and persons believed to be interested in the outcome of this Petition;

1. Stephen J. Morewitz, administrator of the estate of Christos Passalis; of the estate of Constantinos Stamatis; of the estate of Gerassimos Markatos; of the estate of George Marangos; of the estate of Efran A. Martinez; and of the estate of Mukhtar Ahmed.

2. Zorka Passalis, wife of decedent Christos Passalis.

3. Helene Passalis, minor daughter of decedent Christos Passalis.

4. Elene Passalis, mother of decedent Christos Passalis.

5. Panagiotis Passalis, father of decedent Christos Passalis.

6. Afrodite Stamatis, wife of decedent Constantinos Stamatis.

7. Athena Stamatis, mother of decedent Constantinos Stamatis.

8. Andreas Markatos, father of decedent Constantinos Stamatis.

9. Anastasia Markatos, mother of decedent Constantinos Stamatis.

10. Anna Marangos, wife of decedent George Marangos.

11. Andreas Marangos, daughter of decedent George Marangos.

12. Ekaterina Marangos, daughter of decedent George Marangos.

13. Georgia Marangos, daughter of decedent George Marangos.

14. Felix Mayorquin, father of decedent Jesus Ramos Mayorquin.

15. Guillermina Mayorquin, mother of decedent Jesus Ramos Mayorquin.

16. Efran Martinez, father of decedent Efran Alvarado Martinez.

17. Priscilla Martinez, mother of decedent Efran Alvarado Martinez.

18. Gulzar Ahmed, father of decedent Mukhtar Ahmed.

19. Khatoon Ahmed, mother of decedent Mukhtar Ahmed.

20. Zulfegar Ahmed, brother of decedent Mukhtar Ahmed.

21. Iftikhar Ahmed, brother of decedent Mukhtar Ahmed.

22. Ijoz Ahmed, brother of decedent Mukhtar Ahmed.

23. Counsel for above parties.

24. General Development & Shipping Enterprises Co., Ltd.

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OPINION BELOW

The per curiam opinion of the United States Court of Appeals for the Fourth Circuit is not reported, but is printed in the separate Appendix filed with this Petition, infra A1. The Memorandum Order (opinion) of the district court is not reported but is set forth in the Appendix at A5.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

STATEMENT OF THE CASE

These are civil actions under F.R.C.P. 9(h) for wages and damages for wrongful death as a result of the presumed sinking of the SS IMBROS in the Bermuda Triangle in December, 1975. The first Complaint filed was by Ruth A. Morewitz, as Administratrix of the estates of crewmen Stamatis, Passalis, Marangos and

Markatos against Imbros Shipping Co., Ltd., General Development & Shipping Enterprises Co., Ltd. and others not pertinent to this appeal. On July 15, 1976, process was purportedly served on General Development by service on the Clerk of the State Corporation Commission of Virginia. On August 4, 1976, General Development filed a Motion to Quash Service of Process and on August 8, 1977, filed a Motion to Decline Jurisdiction. Various supplemental and intervening Complaints were thereafter filed in behalf of other families.

In November, 1976, process was purportedly served on the defendant Imbros Shipping Co., Ltd. (the registered vessel owner) via the Secretary of the Commonwealth of Virginia and on or about December 3, 1976, Imbros Shipping filed a Motion to Quash Service of Process. The Motion came on for hearing by district judge MacKenzie and in a Memorandum Order dated

January 20, 1977, (A14) the motion to quash service of process was granted on the grounds that the plaintiff could not show a single business transaction within the forum.

On August 24, 1978, a Memorandum Order (A5) was entered overruling General Development's Motion to Quash Service of Process.

On March 26, 1979, after months of harassing discovery the district court entered an order finding G.D.S.E. in default for failure to respond to discovery and ruled G.D.S.E. was the owner pro hac vice as a matter of law. On July 27, 1979, the matter was tried on liability by the court. Neptune International and Continental Lines, the other defendants then parties were dismissed, and General Development was found to be liable to the various plaintiffs. Damages were tried on January 3, 1980, and on April 3, 1980 an order was entered

granting judgment in favor of the following claimants in the following amounts.

Christos Passalis	$105,600.00
Constantinos Stamatis	126,692.80
Gerassimos Markatos	58,675.00
George Marangos	88,158.24
Jesus Ramos Mayorquin	34,864.60
Efran Alvarado Martinez	18,001.12
Mukhtar Ahmed	27,464.60

General Development filed a Notice of Appeal to the United States Court of Appeals for the Fourth Circuit on April 23, 1980; oral argument was conducted on April 9, 1981; on April 24, 1981, the Fourth Circuit issued a per curiam opinion summarily affirming the district court's decisions and awards.

STATEMENT OF FACTS

The SS IMBROS was a Cypriot flag vessel owned by Imbros Shipping Co., Ltd. and managed by the appellant, General Development & Shipping Enterprises Co., Ltd., both Cypriot companies. On December 18, 1975, the SS IMBROS was lost on the high seas in the Bermuda

Triangle, while en route from Mobile, Alabama, to Port Carrier, Quebec, Canada,[1] presumably resulting in the loss of all the crew. At the time in question, the vessel was under a long term time charter to Continental Lines, S.A., a foreign corporation, and for the particular trip in question was voyage chartered to Neptune International Shipping, Ltd. The cause of the sinking and disappearance is unknown. All that was heard from the vessel were two May day messages.

The Greek crewmen, Passalis, Markatos, Marangoes and Stamatis, signed employment contracts in Greece. Mayorquin and Martinez were employed in Honduras and Ahmed was employed outside of the United States, somewhere in Central America. Messrs. Stamatis, Passalis, Markatos and Marangos were citizens and life

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1. The last time the IMBROS had been in Virginia was April 1974.

long residents of Greece; Martinez and Mayorquin were citizens and residents of Honduras; and Ahmed was a citizen and resident of Pakistan.

Imbros Shipping Co., Ltd. and General Development & Shipping Enterprises Co., Ltd. were ultimately owned by Mr. George Tsourinakis who was a resident and citizen of Greece and had no residency in any other countries. The IMBROS and all other G.D.S.E. managed vessels were operated from Greece and had no U.S. operational contracts. All G.D.S.E. employees lived in Greece.

Lavino Shipping, who from time to time acted as local husbanding agent for various G.D.S.E. managed vessels, was hired by G.D.S.E. to act on behalf of the various owning companies, not on behalf of itself.

General Development always acted only as agent for the vessel's owner for the employment of seamen such as the ones under consideration and was not directly responsible for

the payment of any claims or wages.

G.D.S.E. maintained no office, no employees, owned no property or bank accounts or other assets within the State of Virginia. G.D.S.E. never solicited, transacted or obtained any freight business in Virginia, either directly or through an agent; G.D.S.E. never designated an agent in Virginia on whom process can be served.

The vessel owning companies made all of the decisions as to chartering, repair and manning of the various vessels. The charterers directed each vessel to the various ports of call and the cargo to be loaded on board. Ultimately the vessel owning companies not the manager maintained full control over the navigation, management and physical operation of each vessel managed by General Development.

Several families of deceased crewmen from the IMBROS filed suits or claims in Greece, namely Soursos, Sandalakis, Zorbas, Thambasis,

Zaher, Vassilakakis and Costoglou. All of these claims and suits were disposed of by judgment or compromise settlement in Greece. Counsel representing the vessel owner in Greece did not contest jurisdiction of the Greek courts and in fact accepted jurisdiction. Had objection been made to jurisdiction it would not have succeeded because the employment contracts had been signed in Pireaus. As far as the non-Greeks are concerned the fact that they concluded a work contract in Greece would have precluded any objection to jurisdiction. Furthermore, even as to those who did not sign employment contracts in Greece the court would have accepted jurisdiction because of the existence of the manager in Pireaus plus the fact that the operation in fact was from Pireaus.

The families of the various crewmen lost on the IMBROS had rights to bring actions for workmen's compensation under Greek Law 551 or for damages under the Civil Code, the latter

being for fault which would include negligence or unseaworthiness. All settlements were effected under the provisions of law 551.[2]

REASONS FOR GRANTING THE WRIT

I. CONFLICTS WITH DECISIONS OF THIS COURT

The lower courts' decisions conflict with World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980), and Hanson v. Denckla, 357 U.S. 235 (1958).

The district court casually brushed aside the challenge to its in personam jurisdiction. The Fourth Circuit affirmed per curiam likewise without reason or authorities.[3] This Court should not permit such superficial treat-

2. This certainly reflects that claimants' Greek attorneys' thought that there were no facts on which to base a claim of culpability or fault.

3. Indeed the Fourth Circuit may have been confused because it mentioned the Virginia long arm statute which was in no way involved. Obviously, process could not have been validly issued under that statute since the cause of action arose either at Mobile or on the high seas.

ment of basic judicial rights.

General Development was purportedly served with process via the Clerk of the Virginia State Corporation Commission §8-60 of the Code of Virginia (1950) which was a "doing or transacting business" statute. The pertinent jurisdictional facts are as follows:

1. G.D.S.E. was a Cypriot company doing business in Greece, which acted as a ship manager.

2. It maintained no office and had no employees in the United States.

3. It owned no assets of any nature in Virginia.

4. It never solicited nor obtained any freight, either directly or indirectly in Virginia.

5. It never designated an agent on whom to serve process.

6. It conducted its business from offices in Piraeus, Greece.

7. The vessels it managed were under charters to other companies.

8. The destinations and cargoes were determined, as is usual, by the charterers.

9. It appointed local husbanding agents for owners, vis a vis charterers' business[4] who were then acting as agent for owners. 3 Am. Jur. 2d Agency §7

10. It had an employee in Virginia only once, for a few days in December, 1975, prior to the sinking, because of problems in a redelivery of another vessel.

The district court erroneously concluded that "many calls" of G.D.S.E. vessels subjected it to jurisdiction in Virginia.

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4. Under charter parties each party, the owner and charterer, have duties and responsibilities. Typically each will need an agent in a port - the owner for such things as crew matters and the charterer for cargo disposition.

First, relatively speaking they were insignificant - less than 1% of calls to all ports combined over a three to four year period. This volume does not fit within the Fourth Circuits' own test of "fairly substantial contacts." See Grivas v. M/V OLYMPIC PEGASUS, 557 F.2d 65, 68 (4th Cir. 1977).

Second, and more importantly for purposes of certiorari, the district court was of the mistaken view that a call of a G.D.S.E. managed vessel was tantamount to business done by the manager. While it certainly is tantamount to business being done by the charterer, and probably the owner, it does not constitute ipso facto business being done in Virginia by the manager. Is an Athens ship chandler doing business in Norfolk each time a vessel it services calls there?

Third, even if vessel calls constitute "doing business" by G.D.S.E., it could never be

characterized as purposeful activity.

In World-Wide Volkswagen, supra, the Court reaffirmed the principle announced in Hanson v. Denckla, 357 U.S. 235, 253 (1958) that only when a corporation "purposefully avails itself of the privilege of conducting activities within the forum State", may it be hailed into court. The reason is that only then is the corporation on clear notice as to where it can be sued and thus take appropriate steps to alleviate the risks.

Here the charterer not G.D.S.E. directed the itineraries of the vessels and profited (or not) as a result of the cargoes and business activities. In short, only the various charterers "purposefully" conducted business in Virginia.

G.D.S.E. is like World-Wide and the charterers are like the purchasers of Volkswagens. When a vessel was chartered it was foreseeable it would be directed to Virginia,

just as it was foreseeable a purchaser of a Volkswagen would drive to Oklahoma.

> "But the mere unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State: Hanson v. Denckla, supra, at 253, 78 S.Ct. at 1239-1240." World-Wide Volkswagen Corp. v. Woodson, supra, 100 S.Ct. at 567.

G.D.S.E. revenues accrued regardless of where the vessels called. The fact that revenues accrued because the ships were capable of calling in Virginia has been rejected by the Court as a rationale for jurisdiction. World-Wide Volkswagen Corp. v. Woodson, supra, at 568.

The decision below clashes with this Court's two landmark decisions discussed above and for this reason must be reviewed.

Furthermore, the decision below cannot be reconciled with other more carefully considered decisions of the Fourth Circuit.

In Ratliff v. Cooper Laboratories, Inc., 444 F.2d 745 (4th Cir. 1971), the plaintiffs suffered injuries from the consumation of drugs. The question was whether the defendant drug companies were amendable to suit when the offending drug was neither purchased nor consumed in the forum. The court opined,

> "Here the activities of the defendant corporations in South Carolina, although possibly sufficient to constitute 'presence' are nonetheless minimal. Neither maintains an office in South Carolina, and neither warehouses goods there. With the exception of the samples and materials used by Sterling's detail men, neither has any real or personal property in the state. Nor does either maintain a bank account in the state or advertise in directories there (although advertisements do appear in national medical journals which subsequently find their way into the state). The presence of Sterling's detail men in South Carolina and the appointment of an agent for service of process in accordance with South Carolina law does not, we think tip the scale for plaintiff Nichols. We think the application to do business and the appointment of an agent for service to fulfill a state law requirement is of no special weight in the present context. Applying for the privilege

> of doing business is one thing, but the actual exercise of that privilege is quite another. See, International Shoe Co. v. Washington, supra, 326 U.S. at 319, 66 S.Ct. 154. The principles of due process require a firmer foundation than mere compliance with state domestication statutes." P. 748.

How can Sterling, who had appointed an agent for service of process and hence obviously expected to defend suits there, avoid jurisdiction, and G.D.S.E. be amenable?

POINT II.

CONFLICT BETWEEN THE BELGENLAND AND GULF OIL CO. v. GILBERT

In ruling that the "Defendant has failed to persuade us of the sina qua non for dismissal on grounds of forum non conveniens: the availability to plaintiff of an alternative and adequate forum," the district court below placed the burden on the defendant. See Gulf Oil Co. v. Gilbert, 330 U.S. 501 (1947). The petitioner believes Gulf Oil Co. should be con-

fined to suits where an American citizen is the plaintiff. See States Marine Lines, Inc. v. The M/V KOKEI MARU, 180 F.Supp. 255 (N.D.Calif. 1960).

In THE BELGENLAND, 114 U.S. 335 (1885) this Court expressly recognized two different standards in determining whether American admiralty courts should retain jurisdiction over suits between foreigners. In ship collision cases the rule is that jurisdiction should be retained absent special circumstances demonstrating that justice would be better served by a declination. 114 U.S. at 37.

However, the court carefully distinguished claims by members of a foreign vessel's crew against their employer. As to these internal matters, jurisdiction should be relinquished absent a special reason.

> "...the case of foreign seamen is undoubtedly a special one when they sue for wages under a contract which is generally strict in its character

> and framed according to the laws of the country to which the ship belongs; framed also with a view to secure, in accordance with those laws, the rights and interests of the shipowners as well as those of master and crew, as well as when the ships is abroad as when she is at home. Nor is this special character of the case entirely absent when foreign seamen sue the master of the ship for ill-treatment. On general principles of comity, admiralty courts of other countries will not interfere beween the parties in such cases unless there is special reason for doing so..." 114 U.S. at 364.

Therefore, there is a conflict between THE BELGENLAND, supra, and Gulf Oil Co. v. Gilbert, supra, to the extent one requires declination of jurisdiction absent special circumstances and the other retention absent special circumstances. Hence this problem should now be resolved by this Court.

POINT III

CONFLICTS WITH LAURITZEN v. LARSEN

The district court acknowledged that the governing law was found in Lauritzen v.

Larsen, 345 U.S. 571 (1953), and Hellenic Lines Limited v. Rhoditis,[5] 398 U.S. 306 (1970), and then completely ignored these two cases.

In Lauritzen, supra, this court listed seven factors to be considered. They are listed below with the appropriate remarks necessitated by the case at hand.

		Our Case
1.	Place of Wrongful Act.	High Seas
2.	Law of the Flag	Cyrus
3.	Allegiance of Domicile of Injured	Greece
4.	Allegiance of Defendant	Greece
5.	Place of Contract	Greece and Central America
6.	Inaccessibility of Foreign Forum	Greek Courts Available
7.	Law of the Forum	United States

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5. While these cases deal specifically with only the issue of choice of law, it is well accepted that the same considerations apply to discretionary jurisdiction over suits between foreigners. See Anastasiadis v. S.S. LITTLE JOHN, 346 F.2d 281 (5th Cir. 1965) cert. denied 384 U.S. 920 (1966).

The Court in Rhoditis, supra, merely added an eighth factor - base of operations. This need not be discussed since it was never argued by the claimants that the base of operations of G.D.S.E. was the United States.

There was no real dispute between the parties concerning the answers to the above seven questions except No. 6, INACCESSIBILITY OF FOREIGN FORUM. There was only one witness, a Greek attorney, Nicholas Domvros, who testified as an expert for G.D.S.E. He clearly states that in his opinion Greek courts would entertain all of these actions. He did acknowledge that it was a possibility that the Greek courts would decline jurisdiction in suits brought by non-Greeks.

To the extent Gulf Oil, supra, (see Point II infra) is applicable certainly it does not require an endorsement of the plaintiff's choice of forum just because there is a possibi-

lity that another forum would decline jurisdiction. The claimant ought at least be made to try. This is true particularly in this instance since several of the families, including one non-Greek, obtained judicial relief in Greece.

To allow the decision below to stand will have the effect of unduly weighting the sixth factor plus misinterpreting the Gulf Oil case.

This Court should grant certiorari to provide further guidelines relative to the proof necessary to show accessibility of forum, and delineate the relationship between Gulf Oil and Lauritzen.

Moreover, the decision below is contrary to decisions in other circuits. In Nunez-Lozano v. Rederei, 634 F.2d 135 (5th Cir. 1980) all eight factors except

place of contract turned out negative. The court had no difficulty declining jurisdiction.

The Second Circuit in Frangiskatos v. Konkar Maritime Enterprises, 471 F.2d 714 (1972) approved the district court decision 353 F.Supp. 402 declining jurisdiction. As in our case a Greek attorney acting as an expert witness, opined that Greek courts would accept jurisdiction.

In Zouras v. Menalaus Shipping Co., 336 F.2d 209 (1st Cir. 1964) an injured Greek seaman libeled his Liberian flag vessel which was owned by a Liberian corporation. He sustained his injuries on the high seas. The First Circuit sustained the dismissal by the district court and commented "...we cannot see that any injustice whatever would result in relegating the libellant to his home forum for determination of whatever legal rights he might have." Zouras, supra at 211.

The closest case in point out of the

Ninth Circuit is a district court decision, Mihalinos v. Liberian SS TRIKALA, 342 F.Supp. 1237 (S.D. Calif. 1972). There, in declining jurisdiction of a Greek seaman's claim for wages and damages against the vessel owner, the court noted that the courts of Greece had not been shown to be inaccessible. There, unlike our court below, the burden was put on the foreign national to show that the courts of his country were not available.

The decision below conflicts with these decisions and therefore a Writ of Certiorari should be granted.

The last point concerns the claims of the Greek families. Wholly unexplained is the district court's failure to decline jurisdiction as to the Greek seamen whose claims were pursued by their families living in Greece. Certainly they have access to Greek courts.

This Court should grant certiorari to

make it clear that the rights of seamen or their families can rise no higher than the merits of their own circumstances and that they will be given no special consideration just because their claims are joined with those of other nationalities.

Furthermore, retention of jurisdiction over the Greek claims is in conflict with Morewitz v. Ambrose Compania Maritima, S.A., 614 F.2d 379 (4th Cir. 1980), Fitzgerald v. Liberian S/T CHRYSSI P. GOULANDRIS, 582 F.2d 312 (4th Cir. 1978) and Bekris v. Greek M/V ARISTOTELES, 437 F.2d 219 (4th Cir. 1971).

The Fourth Circuit was confronted with the same circumstances as presented here in the above three cases. In each instance the death or injury occurred on the high seas, the seamen were Greek, the flag was either Liberian or Greek, the defendant's business was operated in Greece, and the samen contracted for employment somewhere outside of the United States.

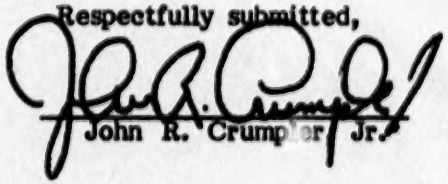
However, in each case jurisdiction was declined with a cryptic remark concerning the obvious availability of Greek courts for Greek seamen. See, e.g., Bekris, supra at 221.

The Fourth Circuit Court of Appeals is guilty of issuing inconsistent opinions. This Court by exercise of its supervisory powers can act to correct this abuse of a judicial obligation.

CONCLUSION

Petitioner respectfully submits that the Court should grant a writ of certiorari and reverse the decision of the court below.

Respectfully submitted,



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APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 80-1321

Stephen J. Morewitz, Administrator, d.b.n. of the Estate of Constantinos Stamatis, deceased;
Stephen J. Morewitz, Administrator of the Estate of Christos Passalis, deceased;
Stephen J. Morewitz, Administrator of the Estate of George Marangos, deceased;
Stephen J. Morewitz, Administrator of the Estate of Gerassimos Markatos, deceased;
Stephen J. Morewitz, Administrator of the Estate of Moses Egbonim, deceased;
Stephen J. Morewitz, Administrator of the Estate of Mukhtar Ahmed, deceased;
Stephen J. Morewitz, Administrator of tne Estate of Augustus Edoro, deceased;
Stephen J. Morewitz, Administrator of tne Estate of Afam Esumei, deceased;
Stephen J. Morewitz, Administrator of the Estate of Khalid Sultan, deceased,

Appellees,

v.

General Development & Shipping Enterprises Co., Ltd.,

Appellant,

and

Imbros Shipping Co., Ltd.; Continental Lines, S.A.; Continental Lines (Armement), S.A.; Federal Commerce and Navigation (1974) Ltd.; Contramer, S.A.; Neptune International Shipping, Ltd.; Neptune International Shipping; Lone Star International, Inc.; Lone Star International Ltd.; Lone Star Shipping; Lone Star Shipping, Inc.; Quebec Cartier Mining Co., Std.; all foreign corporations or associations, and George A. Tsourinakis, a non-resident, as owners and/or operators of the Cyprus M/V IMBROS; Ryan Stevedoring Corp.; Ryan Walsh Stevedoring Co.; Alabama Wood Treating Corp. all foreign corporations or associations,

Defendants.

Appeal from the United States District Court for the Eastern District of Virginia, at Newport News. John A. MacKenzie, Chief Judge.

Argued April 6, 1981 Decided April 23, 1981

Before WINTER, Chief Judge, RUSSELL, Circuit Judge, and ANDERSON*, District Judge.

John R. Crumpler, Jr. (Seawell, McCoy, Dalton, Hughes, Gore & Timms on brief) for Appellant; Burt M. Morewitz (Herbert Lebovici; Thomas M. Breen on brief) for Appellee.

* Hon. G. Ross Anderson, Jr., United States District Judge for the District of South Carolina, sitting by designation.

PER CURIAM:

Defendant, against whom a number of judgments for wrongful death on the high seas were entered, appeals contending that the district court erroneously denied its motion to quash service of process and that the district court erroneously denied its motion to decline jurisdiction. We affirm.

From our examination of the record, we are persuaded that the defendant's contacts with the State of Virginia were sufficient to satisfy the requirements of due process of law and the Virginia long-arm statute. We also do not think that the district court abused its discretion in concluding to exercise jurisdiction notwithstanding defendant's claim of forum non conveniens. The doctrine of forum non conveniens "presupposes at least two forums in which the defendant is amenable to process." Gulf Oil Co. v. Gilbert, 330 U.S. 501, 506-07 (1947). The district court found that no alter-

native forum was available to some, if not all, of the plaintiffs, and that finding is not clearly erroneous.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Newport News Division

RUTH A. MOREWITZ,
ADMINISTRATRIX ETC., ET AL

Plaintiff,

v.

Civil
Action No.
76-103-NN

IMBROS SHIPPING CO., LTD.,
ET AL.,

Defendants.

MEMORANDUM ORDER

I

Background

On December 18, 1975, the SS IMBROS. sailing under the flag of Cyprus, was lost with all hands in the Bermuda Triangle. She had been carrying a cargo of railroad ties from Mobile, Alabama to Port Cartier, Quebec, Canada. At the time of her loss, the IMBROS had a multinational crew, including ten Greeks, three Nigerians, two

Pakistanis, one Egyptian, and one Jordanian.

In July 1976, plaintiff qualified in the Circuit Court of Newport News, Virginia, as Administratrix of the estates of four Greek crew members. Plaintiff thereupon filed suit in Newport News Federal District Court on behalf of her decedents, alleging a plethora of causes under 46 U.S.C. §§596-601, 608; under 46 U.S.C. §761 et seq.; under 54 Stat. 1693; under the general maritime law, under the laws of Cyprus; under the British Fatal Accidents Act; and under any other treaty, convention, statute, or law which might apply. Since filing the original complaint, plaintiff has also sought to pursue the claims of the estates of two Nigerians and a Pakistani, all members of the ill-fated crew.

Among numerous defendants, General Development and Shipping Enterprises Co., Ltd., ("General Development"), is a Cypriot corporation which "managed" the IMBROS. General

Development handles only vessels owned by George Tsourinakis, a Greek citizen and resident. Mr. Tsourinakis and his wife are apparently the sole shareholders of General Development.

Defendant General Development admits that during the period from July 26, 1973 to October 2, 1976, four of the ten vessels which it "managed" made seventeen calls at Hampton Roads, Virginia, staying a total of at least forty-five days. General Development further admits that in December 1975, the month when the IMBROS was lost, it had sent its Port engineer to Hampton Roads to perform tasks in connection with re-delivery from charter of another vessel managed by it. General Development's activities in Virginia also included a variety of ancillary transactions such as appointment of agents in connection with the vessel visits. Defendant has had numerous other contacts with the United States, such as taking extraordinary maintenance and signing on several seamen for the IMBROS at

American ports.

Pursuant to Rule 4 of the Federal Rules of Civil Procedure, plaintiff secured service on General Development through the Clerk of the Virginia State Corporation Commission, in accordance with § 8-60 Code of Virginia. Defendant has moved this Court to quash service, or in the alternative, to exercise its discretionary powers to decline jurisdiction.

II

Issues

Section 8-60 of the Code of Virginia extends amenability to suit in Virginia in admiralty cases. Grevas v. M/V OLYMPIC PEGASUS, 557 F.2d 65, 68 (4th Cir. 1977). Therefore, the first issue before us is whether subjecting General Development to jurisdiction in the Virginia forum would "offend" 'traditional notions of fair play and substantial justice.'"

See International Shoe Co. v. State of Washington, 326 U.S. 310, 316 (1945). In deciding this issue, a court should consider "the relationship among the defendant, the forum, and the litigation" to determine whether exercising jurisdiction over the defendant would be fundamentally fair to all parties under the Fifth Amendment. See Shaffer v. Heitner, 433 U.S. 186, 204 (1977).

Even if the minimal standards of due process are satisfied, however, we must consider an additional issue: whether Virginia provides a comparatively convenient forum. The exercise of jurisdiction over the instant case is a mater within our sound discretion, based on the facts and circumstances. Canada Malting Co. v. Patterson S.S. Ltd., 285 U.S. 413, 421 (1932). In wielding this discretion, the Court must consider the totality of circumstances related to the comparative convenience of adjudicating the

instant case in Virginia, including: the availability and adequacy of alternative forums open to plaintiff; the effect of retaining jurisdiction on important admiralty policy concerns; the litigational relationship of the controversy sub judice to the forum, such as the accessibility of witnesses and evidence; and the substantve nexus between the forum and the litigation at bar, such as the residence of each party, the situs of origination of plaintiff's cause of action, and the governing law as determined under Lauritzen v. Larsen, 345 U.S. 571 (1953), and Hellenic Lines Limited v. Rhoditis, 398 U.S. 306 (1970). See Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1947). See generally Note, "Forum Non Conveniens," 44 Fordham L. Rev. 413; R. Robol, Admiralty's Adjudiatory Jurisdiction: A Functional Analysis 13-16 (unpublished Honors Thesis, Harvard Law Library Permanent Reserve).

III

Discussion

A

Due Process Requirements for Exercising Adjudicatory Jurisdiction Over General Development

General Development's relationship to this forum where plaintiff has brought suit, on the facts and circumstances of this particular case, suffices for purposes of due process under the Fifth Amendment. Vessels managed by defendant made many calls from July 1973 to October 1976, injecting General Development into various ancillary transactions. Personnel from General Development engaged in substantial activities in Hampton Roads during the very same month when the IMBROS disappeared. We therefore determine that subjecting defendant to suit in Virginia would be fundamentally fair to all parties in light of the totality of circumstances in the

instant case.

B

Comparative Convenience of the Virginia Forum

Defendant has failed to persuade us of the sine qua non for dismissal on grounds of forum non conveniens: the availability to plaintiff of an alternative and adequate forum. See Gulf Oil Corp., 330 U.S. at 508. The conflicting evidence concerning the adequacy of plaintiff's remedy in Greece, given the fact that the cause of action did not arise there and that defendant is not incorporated under Greek law, leaves us unconvinced that justice would be served by relinquishing jurisdiction. Crewmen, other than Greek Nationals, under the circumstances of this case, do not have access to the broader sweep of Greek law.

Nor are we persuaded that adjudication in Greece would accrue any significant litigative advantages. The record fails to

demonstrate that either witnesses or evidence are more accessible in Greece. On balance, Virginia offers a comparatively convenient location for centralizing the various litigations raised by plaintiff's suits.

IV

Conclusion

The motions to quash service of process and decline jurisdiction are both DENIED.

It is so ORDERED.

(signed by) John A. MacKenzie
United States District Judge

Norfolk, Virginia

August 24th, 1978.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Newport News Division

RUTH A. MOREWITZ,
ADMINISTRATRIX OF THE ESTATE
OF CONSTANTINOS STAMATIS, ETC.

Plaintiff,

v.

Civil Action No. 76-103-NN

IMBROS SHIPPING CO., LTD.,
ET AL.

Defendants.

MEMORANDUM ORDER

The purpose of this Order is to decide the motion of defendant Imbros Shipping Co., Ltd. (Imbros) to quash service of process. We express no opinion on the two pending motions of defendant General Development and Shipping Enterprises, Co., Ltd. to quash service of process as to it.

On December 18, 1975 the Cyprus SS IMBROS was lost at sea with all hands while carrying a cargo of railroad ties from Mobile,

Alabama, to Port Cartier, Quebec, Canada. On July 14, 1976 the plaintiff was appointed as Administratrix to the Estates of four Greek crew members who perished in the disaster. On November 19, 1976 the Secretary of the Commonwealth of Virginia was served with process as the agent of defendant Imbros under the Virginia "long-arm" statute, Code of Va. §8-81.1 et seq. (1976 Supplement). It is this service which Imbros seeks to quash. In her Second Amended Supplement Complaint, plaintiff seeks: (1) damages for wages due each decedent and liquidated damages under 46 U.S.C. §§596-597 because of defendants' failure to pay such wages, and (2) damages for the wrongful death of each decedent.

Code of Va. §8-81.2(a)(1) provides:

> A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action arising from the person's
>
> (1) Transacting any business in this State...

We agree with plaintiff that §8-81.2(a)(1) has been construed to require only one business transaction in Virginia if that transaction gives rise to the liability asserted. Plaintiff's Brief 4-6, citing McGee v. International Life Insurance Co., 355 U.S. 220 (1957); Kolbe, Inc. v. Chromodern Chair Co., 211 Va. 736, 180 S.E.2d 664 (1971). The problem is that plaintiff has not alleged a business transaction in Virginia which has given rise to any liability asserted.

A liability cannot arise until a duty is wed, and no duty was owed to any of these four decedents until they signed the Articles of the vessel. The only relevant transaction that plaintiff alleges is that the Articles for the Cyprus SS IMBROS were opened at Hampton Roads, Virginia on April 1, 1974. However, decedent Marangos did not join the vessel and did not sign the Ship's Articles until April 10, 1975 at West Palm Beach, Florida; the other three dece-

dents joined the vessel and signed the Articles at New Orleans, Louisiana in early October, 1975. The evidence is that this vessel was never in Virginia while these decedents were members of its crew.

We conclude: (1) that plaintiff has not shown a single transaction in Virginia which has given rise to the liability asserted in this suit, (2) that the service of process on the Secretary of the Commonwealth as agent of defendant Imbros must be quashed, and (3) that this Court has no jurisdiction over the person of defendant Imbros.

We express no opinion on the issue of this Court's subject matter jurisdiction over either the wage claims or the wrongful death claims. We have only considered whether it would offend "traditional notions of fair play and substantial justice" to subject defendant Imbros to a judgment in personam when it is not present within the Eastern District of Virginia,

and plaintiff cannot show a single business transaction within this forum. The opening of Articles before any of the decedents joined the vessel is not such a business transaction affecting them.

For the reasons stated herein, it is ORDERED that the motion of defendant Imbros Shipping Co., Ltd. to quash service of process is GRANTED.

(signed by) John A. MacKenzie
United States District Judge

Norfolk, Virginia

January 20, 1977

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Newport News Division

RUTH A. MOREWITZ,
ADMINISTRATRIX OF THE ESTATE
OF CONSTANTINOS STAMATIS, ETC.

Plaintiff,

v.

Civil Action No. 76-103-NN

IMBROS SHIPPING CO., LTD.,
ET AL.

Defendants.

DEPOSITION OF MR. NICHOLAS DOMVROS

This is a deposition of Mr. Domvros taken pursuant to notice and Court order. This deposition is being taken in Piraeus, 3 Akti Miaouli, on August 18th, 1977.

Let the record reflect that Mr. Nicholas Domvros was sworn by John Crumpler and that Mr. Evangelos Tsouroulis was duly sworn by the same as interpreter where necessary:

Crumpler : State your full name.

Domvros : Nicholas John Domvros.

Crumpler : State your age and home address.

Domvros : 38 years old 22-24, Syrangiou Street, Piraues.

Crumpler : Let the record show that Mr. Pavlakis objects to this deposition because it is not before a Notary as in the Notice of Deposition and because there is no shorthand writing.

Let the record further reflect that the defendant will have Mr. Domvros execute the deposition after typing before the American Consul.

Crumpler : Mr. Domvros, are you a qualified Attorney in Greece?

Domvros : Yes.

Crumpler : For how long?

Domvros : I am an Attorney at Law since 1965 admitted in the Courts of Piraeus and Athens and I was later admitted

as well to the Court of Appeals, Athens.

Crumpler : What Law Firm are you a member of?

Domvros : I am a member of the Law Firm Deucalion Rediadis and Sons, right from the beginning of my legal career.

Crumpler : Did you represent the Owners of the "IMBROS" in connection with claims by crew members as a result of the vessel's sinking in December 1975?

Domvros : We, our Firm, represents the vessel which is covered by the Club known as the West of England Association.

Crumpler : What crew members did you represent the Club for?

Domvros : As far as I know, the families of Vassilakaki, Costoglou, Soursou, Sandalaki, Zorba, Tsabasi and Jordanian Zahir Ahmad, had indicated to maintain life claims as a result

of the sinking of the vessel called "IMBROS".

Crumpler : Which of these crew men were Greek?

Domvros : All of them, except the last one.

Crumpler : Were these families represented by Attorneys in Greece?

Domvros : Yes.

Crumpler : Were any Law Suits filed in Greece?

Domvros : The families of Soursou, Sandalaki, Zorba and Tsambasi also of the foreigner Jordanian filed suits in Greece but so far as we are concerned we only had to attend to the cases of Vassilakaki and Costoglou as the other cases had been handled by Owners themselves.

Crumpler : Have any of these suits been concluded?

Domvros : None of the cases we were handling was heard up to the time we were

attending thereto but I understood later that the actions filed on behalf of Tsambasis and of Zorbas had been heard, Owners' lawyer having attended.

Crumpler : Were any compromised?

Domvros : Our office attended to the compromise settlement of the suits filed by Soursou and Zahir Ahmad. As far as I know, the Sandalakis claim was also settled by compromise but not through our office.

Crumpler : Did you contest the jurisdiction of the Greek Courts?

Domvros : On the contrary, I accepted the jurisdiction of the Greek Courts. Also, I compromised two other claims by the families of Master Vassilakakis and A.B. Seaman Costoglou where no actions were filed. I accepted jurisdiction in

Greece, when concluding the compromise settlements in Court in respect of the last two claims too.

Crumpler : Were any of these compromises approved by the Greek Court.

Domvros : All the compromise settlements were effected before the Court of First Instance of Piraeus (Labour Section).

Crumpler : Do you have a copy of these compromises?

Domvros : Yes, of course, there are copies of the relevant Acts of Minutes before the above mentioned Court and releases before the American Consul, except in the case of the Soursou family where we only have the Act of Minutes of the Court. I mean about the four settlements, i.e.:

Vassilakakis, Costoglou, Soursou and

Zahir Ahmad, Jordanian, effected by me.

Crumpler : Let the record reflect that the stenographer is initialling each of these seven documents which will be photocopied.

Crumpler : What rights do have the Greek seamen such as the families of those two compromised under Greek Law?

Domvros : The families of the men lost are entitled to compensation under the Greek Workmen's Compensation Act No. 551 of 1914 in certain circumstances plus reasonable funeral expenses, but, on the other hand, they may have claims under the Civil Code again under certain circumstances. Also the heirs are entitled to any balance of outstanding earned wages and also to reasonable compensation

for loss of personal effects/ professional effects.

Crumpler : Do the families have the right in both 551 compensation and a Civil Action?

Domvros : No, they cannot claim under both Workmen's Compensation Act 551 and Civil Code. They must elect as per Article 16 of the Workmen's Compensation Act 551.

Crumpler : Must the families prove negligence for 551 compensation?

Domvros : No, under the Workmen's Compensation Act 551, there is "objective" responsibility on the part of the Shipowner to compensate the families even for blameless accident. On the contrary, for the Civil Code provisions to apply it is necessary to prove "fault" which would include negligence and/or unseaworthiness.

Crumpler : Were the compromises paid under 551 or under the Civil Actions/Code?

Domvros : The settlement effected were concluded on the basis of the provisions of the Workmen's Compensation Act 551.

. . . .

Pavlakis : Mr. Domvros, you spoke about the compensation provided by Law 551. Is this a full recovery of damages for the families of the deceased? Is it a fixed sum calculated on the basis of the wages of the deceased?

Domvros : Yes, it is a fixed sum calculated on the basis of the yearly earnings, not damages at Common Law.

Pavlakis : Might this compensation be much less than full recovery of damages?

Domvros : It is less normally.

Pavlakis : Is there any provision in the Greek

Law about granting full recovery as distinguished from said compensation 551 because of unseaworthiness of the ship?

Domvros : For the application of the provision of Civil Code which provide for damages in case of "fault", it is necessary for a plaintiff to be able to prove "fault" of the party against which claim is made, including negligence and/or unseaworthiness which depends on the merits of the particular case.

Pavlakis : So, I am right in saying that negligence or unseaworthiness alone cannot be a basis for full recovery.

Domvros : Whilst under the Greek Civil Code a person who has sustained loss out of any other persons "fault" is entitled to claim damages (no distinction being made as to breach

of regulations or not) the tendency of our Court is to obtain an award for damages, one has to prove that negligence or unseaworthiness out of fault, resulted to, or provoked breach of regulations and the accident is to be attributed thereto.

Pavlakis : This is also true about injury cases, not only death cases.

Domvros : Yes.

Pavlakis : Now, regarding negligence.

Negligence alone is enough in order to sue according to the Civil Law for full recovery, even if it is gross negligence? - as distinguished from compensation of Law 551.

Domvros : According to Article 16 of the Workmen's Compensation Act 551, right to full recovery under the Civil Law is permissible in case of Fraud/Intentional Act on the part of

the employer of failure to observe provisions relating to safety measures specifically provided for in the Law, provided that the accident is due to such failure, as I have already stated.

Pavlakis : So, I am correct stating that only negligence without such non-observance of safety regulations, even if it is a gross negligence, is not enough to give right to sue for full recovery?

Domvros : Yes.

Pavlakis : It is true that by non observance of specific safety regulations the practice of the Greek Courts means regulations specifically provided in writing in the Law for the case under consideration, so that it was considered that the failure to observe the General provision of

section 662 of the Greek Civil Code about the obligation of the employer to provide employees with a safe, healthy and proper place of work as well as of other similar general provisions in the Greek Law, does not constitute a non observance of safety regulations according to said Article 16 of Law 551?

Domvros : As far as I know, according to recent decisions of the Greek Courts, in fact it is required to have a breach of the provisions of Article 662 of the Civil Code and similar general provisions, though I cannot exclude the contrary.

Crumpler : We will attach as exhibits Articles 16 and 551 and 662 of the Civil Code.

Pavlakis : Is it true that as a result of the above interpretation the practice of

the Greek Courts is to accept non observance of specific safety regulations in a very limited number of cases in relation to the whole of cases.

Domvros : The regulations of working conditions aboard Greek cargo vessels and other specific statutes such as loading regulations, sailing regulations, maintenance and supply of vessels, etc., contain detailed provisions and if a breach of same is established and proved then it is easy to find a non observance of the said specific regulations. I cannot give you a percentage representing this type of claims in relation to the whole number of seamen's accident cases.

Pavlakis : Are these cases less or more than the ones of 551?

Domvros : They are less obviously.

Pavlakis : Can - you presently cite such decisions of full recovery as an example of how the Courts interpret the regulations?

Domvros : I have no such on hand, but by following decisions in journals, etc., I am aware of such decisions.

Pavlakis : If a Greek Court would apply Greek Law to the claims of the surviving dependent relatives of any seaman who died in the loss of the m/v "IMBROS", do you think upon your experience that it would apply any other Law besides Law 551?

Domvros : As far as I know, circumstances surrounding the sinking of "IMBROS" do not give rise to a claim under the Civil Law for full recovery of damages, but only in accordance to Law 551.

My above opinion is strengthened by the fact that the Lawyers who filed Actions against the vessel elected as the basis of their claims the Workmen's Compensation Act 551, because they did not find any facts upon which to base a claim under the Civil Law.

Pavlakis : Do you know the sums collected by the four families who settled the claims?

Domvros : Vassilakakis Drs. 860,000.-

Soursos " 640,000.-

On the basis of Act of Minutes:

Plus Drs. 100,000.-

On the basis of a receipt, a copy of which I attach herewith, as a supplementary financial assistance.

Crumpler : We now have attached additional receipt for Soursos' settlement marked H.C.(s).

Domvros : I continue:

Costoglou Drs. 330,000.-,

and,

Jordanian Zahir Ahmad 200,000.-

Pavlakis : Do you know what each of these families might get in full recovery of their damages under any Law? - providing for such full recovery? -

Domvros : According to the application of the Greek Civil Law in respect of which I can speak, compensation for full recovery, could have been greater but I cannot specify the amounts because this requires a calculation of a lot of factors, e.g.: the age of the deceased, the wages, the heirs that survived him, if the heirs were supported by him and to what extent, the needs of the next-of-kin, etc.

Pavlakis : Is it true that the Act of Minutes which were marked as exhibits are not court decisions but they were signed at the secretariat of the Court, I mean particularly that there had been no judicial examination on the various issues of each dispute?

Domvros : Said documents do not constitute a Court decision but, according to the provisions of the Workmen's Compensation Act 551 and the Code of Civil Procedure they are deeds of settlement agreed and concluded before the competent Judge of the Labour Section of the Court of First Instance of Piraeus, following thorough examination of facts as in the Act of Minutes by the Judge and the duly authorized lawyers of the family.

The thorough examination of the document by the judge is always done and the minutes are always signed in the presence of the Judge. All the more as the cases in question concerned death of samen, large amounts of compensation and the existence of minor children. For the Settlement of the latters (i.e. minor children's) claims, a special Court decision proceeded permitting the compromise settlement and the terms thereof following a resolution of the family Council before the Justice of the Peace. Prior to the signing of the Act of Minutes in Court, the lawyers of the respective parties agree the contents of the Act of Minutes and of the releases as and when drafted.

Pavlakis : Am I correct to say that these Minutes contain the Agreement reached by the parties?

Domvros : Yes.

Pavlakis : ...and that they merely sign it before the Judge as, in other cases, they sign it before the Notary Public?

Domvros : According to section 14 of the Workmen's Compensation Act 551 a binding compromise settlement is allowed to be effected only before the competent Justice of the Peace, but following an amendment of the Code of Civil Procedure in addition to the Justice of the Peace, a judge in the Court of First Instance is also competent, i.e. he has jurisdiction or authority to attend. The same article provides that in no

case the amount of the settlement can be by more than 15% less of the amount of the 551 claim in cases of death and total permanent disability.

Thus, in my opinion settlement of a 551 Law claim before a Notary Public is void and can only constitute a mere receipt of an amount received.

Pavlakis : You speak about the formality to be observed in signing these Minutes while I am asking about the job which the Judge does in this respect - precisely, I am asking you whether the judge examines any witnesses on the merits of the case or if he sees any other evidence or if one reads any memoranda of the parties or if he does anything else except to attend at the signing of the Minutes. I agree that he might

check whether the sum of the settlement is above the 85% of the sum under 551 but do you know any case where he did more than that?

Domvros : During the proceedings of compromise settlement before the Judge, no witnesses are examined, but the Judge checks the accuracy of the contents of the Act of Minutes, the earnings and the method of calculation of the compensation. He satisfies himself that these are in accordance with the Law and he asks the beneficiaries and their lawyers if they agree with the terms of the settlement and if they are satisfied generally with the settlement of the matter. Only after the above checking he goes ahead and signs the Act of Minutes, approving the settlement as within the Law.

Pavlakis : Is it correct to say that apart from checking the correctness of the sum with respect to the one provided by Act 551 and that the parties voluntarily come to the settlement, the Judge is performing no judicial task in connection to this Act of Minutes.

Domvros : The tasks of the Judge in these particular proceedings are judicial and he has the obligation to and does check the observance and application of both the formal and substantive provisions of the Law.

Pavlakis : Is the meaning that the sum of the settlement is not less than the minimum permitted as above by Law 551 and the parties appearing voluntarily and knowingly came to the settlement according to the Civil Procedure Code?

Domvros : Yes, I have explained above.

Pavlakis : Is it conceivable to dispute jurisdiction in this Act of Minutes proceeding?

Domvros : No, because the parties appear voluntarily and following their agreement as permited by our Code of Civil Procedure.

Pavlakis : So, you can't know whether there would be an objection as to Greek jurisdiction, should there be no settlement in the four above cases.

Domvros : Even if the actions had in fact been heard in Greece, I would not raise an objection as to the jurisdiction of the Greek Courts. But, even if it had been raised, it would not have succeeded because the contracts of employment of the deceased had been signed in Piraeus, they were Greeks except for the Jordanian one

and their families lived in Greece, again with the exception of the Jordanian and I also wish to say that recently judgment have been rendered in the cases defended by Owners' lawyer these of Tsambasis and Zorbas, admitting the actions.

Crumpler : In response to the question asked by Mr. Pavlakis I will agree that the compromise proceedings will not establish or deny jurisdiction.

Pavlakis : What about the Jordanian in regard to the Jurisdiction of the Greek Courts?

Crumpler : (The witness at this point is searching his file to see if there is an agreement of employment for the Jordanian deceased crew member too).

Domvros : I did not find an agreement of employment but in the Law Suit filed

by his relatives their lawyer stated that the deceased concluded a contract of work on the 3rd of June, 1975 in Piraeus.

Pavlakis : Do you know whether this contract provided Greek jurisdiction or not?

Domvros : I have not seen it.

Pavlakis : You say that the Court, if there was objection, would not deny Greek jurisdiction regarding the four Greek crew members who filed a Law Suit, do you say the same for the Jordanian too?

Domvros : If he had signed an agreement employment in Pireaus, yes. I am of the opinion that even if he had not signed such contract in Piraeus, the Court would have accepted jurisdiction because of the existence of the vessel's agents in Pireaus plus the entire circumstan-

ces and prevailing conditions of the whole shipping enterprises.

Pavlakis : Have you copies of the decisions you said were issued in the cases of Zorbas and Tsambasis?

Domvros : No, because they have not yet been signed by the Judge due to absence out of the Summer holidays.

Pavlakis : Have you read them?

Domvros : Yes.

Pavlakis : They are awarding the Workmen's Compensation Act 551 compensation?

Domvros : Yes, plus balance of earned wages and loss of personal effects.

Pavlakis : Do you remember the sums?

Domvros : It is something more than Drachmae 600,000.-.

Pavlakis : Was there any objection to jurisdictions in these cases?

Domvros : Having seen the judgments, I realized that Owners' lawyer has not

disputed jurisdiction.

Pavlakis : I am showing to you two decisions of the Athens Court of Appeal, one of the year 1962 concerning a Greek seaman by the name of Bikos and one of the year 1972 regarding a Greek seaman named Emmanuel Psaras. Am I correct that in both cases, the Court of Appeal of Athens - Greece, has held that a Greek Court has no jurisdiction on a suit brought by a Greek seaman against a foreign corporation on basis of injuries sustained in an accident occurring outside of Greece, if the foreign corporation objects to the Greek Courts taking jurisdiction?

Domvros : As I see from the two decisions, as regards BIKOS' case Number 693/1962 the Court declined jurisdiction only regarding the compensation in

respect of pain and suffering (moral damage) and ruled on the other matters on the merits dismissing the action. In the second case, 228/72 it was dismissed due to lack of jurisdiction, but as I see, he seamen in question had not signed the agreement of employment in Greece otherwise the judgment would have said so. I assume this to be the case because this is a very important factor in establishing jurisdiction and the Court would have mentioned in its judgment.

Pavlakis : Now, that you have seen these two decisions, are you still of the opinion that the Court would accept jurisdiction on each one of JESUS RAMON MAYORQUIN who was a citizen and resident of Honduras, CONSTANTINOS STAMATIS who was a

citizen and resident of Greece, CHRISTOS PASSALIS who was a citizen and resident - of Greece, GEORGE MARANGOS who was a citizen and resident of Greece, GERASSIMOS MAKATOS who was a citizen and resident of Greece, in case there would be an objection to Greek jurisdictio?

Domvros : The above two decisions exhibits A and B are the exceptions to the practice of Court precedence on numerous decisions to the contrary. As regards the four Greek seamen's claims mentioned above, they have signed agreements of employment in Piraeus and, according to article 33 of the Court of Civil Procedure, the place of signing of the contract creates jurisdiction and competency of the Greek Courts. All the more as they would be Greek citizens and

their families in Greece. As regards the alien I do not know whether he had signed a Contract of employment in Greece in which case there would be Greek jurisdiction, or whether he signed the Contract abroad in which case upon an objection being taken as to the Courts jurisdiction, possibly the Court would have declined jurisdiction.

Pavlakis : Regarding the four Greeks' families who have pending actions in the U.S.A., in what respect is the position regarding Greek jurisdiction different from the Grek seamen of the exhibits A and B if we assume that they also had signed agreements of employment in Greece.

Domvros : As I have stated here above, there is no possibility for the Court to decline jurisdiction since there are

agreements of employment signed in Piraeus and in view of all surrounding circumstances.

Pavlakis : Could you cite cases in which you have been involved or which you have knowledge where the Greek Court took jurisdiction of claims by the seamen against a foreign Corporation in a case of accident occurring outside of greece when the foreign Corporation objected to the Court taking jurisdiction by either Greek or foreign seamen.

Domvros : I have no such decisions on hand all the more because our Law Firm does not actually raise objections to jurisdiction.

Pavlakis : Do you know whether Greek Courts have ever applied to claims of seamen injured outside of Greece aboard a foreign flag vessel, the

Law of the foreign nation where the vessel was registered?

Domvros : I have never come across a judgment admitting such an application.

Pavlakis : The Law of the Nation in which the shipowning Company was based?

Domvros : I have not seen such judgment apparently because usually in the contract of employment there is a provision for the application of Greek Law.

Pavlakis : The Law of the nation of which the seamen was a citizen?

Domvros : I have not seen such an application but, of course, I do not exclude it.

Pavlakis : Do you think that a Greek Court would apply Cyprus Law to any claims filed by the surviving relatives of seamen who died as a result of the sinking of the M/V "IMBROS"?

Domvros : Probably the Court would have

applied Cypriot Law if Cypriot Law was appropriate under Article 25 of the Greek Civil Code. Article 25 says the applications rising from the contract are regulated by the Law of which the ports have submitted themselves. In the absence of such a Law, the Court would apply the Law which is the appropriate one after all subjects and surrounding circumstances have been given consideration to.

Pavlakis : I am asking, does this information apply in a particular case where there was a possibility for the Law of Cyprus to be applied for Greek or foreign seamen's families in the "IMBROS" case?

Domvros : My opinion is that the Court in this case would have applied Greek Law because the Contracts of Employment

were signed in Greece, the vessel's agents are in Greece, all officers and part crew Greek.

Pavlakis : Does it also apply for the Honduran and the other foreign crew members?

Domvros : If they had signed contracts in Greece, yes.

Pavlakis : Would it be possible that the Greek Court might apply the Law of the countries of which they were citizens.

Domvros : If the Court felt that the proper law of the contract was that of Honduras or of any other foreign country then the Court would have applied such a foreign Law, in the absence of agreement for Greek Law in the contract of employment.

Pavlakis : Could you cite cases in which you have been involved or of which you have knowledge, where the Greek

Court applied foreign Law in claims brought by the seamen against the foreign company because of an accident occurring outside of Greece for Greek or foreign seamen.

Domvros : I do not know of such a case because it is very unusual to object to the Court's jurisdiction and for the Court to decide on such an objection.

Pavlakis : You mention about the application of a foreign Law?

Domvros : Yes.

Pavlakis : As far as you know had JESUS RAMON MAYORQUIN any right to file claims (judged) in Greece and any protection under Greek Law?

Domvros : JESUS RAMON MAYORQUIN and/or his relatives could have protection under Greek Law 551 subject to the provisions laid down therein.

Pavlakis : What do you mean provisions laid down?

Domvros : That there must be beneficiaries within the meaning of Law 551 that they had been mentioned by the deceased and that the seaman and his family lived in Greece at the time of the accident.

Pavlakis : Now you believe that these conditions should control the last one, what was felt with respect to any of the foreign crew members of the "IMBROS"?

Domvros : I think no, except for those living in Greece.

Pavlakis : This is improvable. I show to you the minutes 403 of the year 1976 exhibit which concerns the ZAHER and I ask you to read the second page. This to be on the record.

Domvros : The minutes are as follows: The

said lawyer (for the defendant) stated that the husband of the plaintiff and the plaintiff herself did not reside in Greece at the time of the accident an in the absence of a relative convention with Jordan she is not entitled to compensation under Law 551.

Pavlakis : I asked you to read this and I am asking you whether there was any other right of foreigners in Greece.

Domvros : Yes, there could be in the Civil Code if certain conditions existed.

In the particular case of the widow and relatives of ZAHER, the action had two bases; one was that of Law 551 and in the Civil Code.

Pavlakis : Do you think that the Court would have jurisdiction ever a Jordanian even under the Civil Code?

Domvros : Yes, because I think that Greek Law

is the proper Law of the contract.

Pavlakis : I asked about jurisdiction, I am not asking about applicable Law.

Domvros : Yes, the Greek Courts would be competent for this claim.

Pavlakis : Which would be the contacts with Greece if we took into consideration that the ship was of Cyprus flag, the shipowning company was a foreign company, that he was a foreign citizen and of residence (as well as the claimant family after his death when as far as we know, there was no agreement of employment signed by him in Greece.

Domvros : I have not in my hand his employment agreement but it is stated in the action that in June 1975 in Greece, an employment agreement was signed providing, inter alia, for Greek jurisdiction and also the fact that

the management of the vessel was conducted from Piraeus, the vessels agents are situated in Piraeus and the officers of the vessel were Greek as well as a lot of the other members of the crew and that almost all of the crew members had signed contracts of employment in Piraeus. I cannot see which other Court of any other country had connections other than the Greek Court.

Pavlakis : Would you say the same think for JESUS RAMON MAYORQUIN, if he has not signed a contract of employment in Piraeus?

Domvros : yes, even if he had not assumedly signed a contract in Piraeus because of all of the other points mentioned above, I feel that the Greek Law would be applied and the Greek Court would have jurisdiction. I wish to

Pavlakis : Are you not confusing jurisdiction with applicable Law?

Domvros : Of course not, but I consider that these two are not separate or independent.

Pavlakis : Do you allege that when there are conditions calling for a Law to be applied, there is always jurisdiction of the Law of that country?

Domvros : No.

A60

FIRST ORIGINAL

TIME CHARTER

GOVERNMENT FORM

Approved by the New York Produce Exchange November 6th, 1913—Amended October 20th, 1921, August 6th, 1931, October 34d, 1946.

THIS CHARTER PARTY, made and concluded in Hamburg 7th day of June, 1973. Between Messrs. Imbros Shipping Co. Ltd., Nicosia Owners of the good Cyprus (Motorship) "I M B R O S" of 3.284 tons gross register, and 2.412 tons net register, ... and Messrs. Contramar S.A. Charterers of the City of Antwerp.

WITNESSETH, That the said Owners agree to let, and the said Charterers agree to hire the said vessel, from the time of delivery, for 36 months timecharter within below mentioned trading limits. Charterers to have liberty to sublet the vessel for all or any part of the time covered by this Charter, but Charterers

remaining responsible for the fulfillment of this Charter Party.

Vessel to be placed at the disposal of the Charterers, at ANTWERP in such dock or at such wharf or place (where she may safely lie, always afloat, at all times of tide, except as otherwise provided in Clause No. 6), as the Charterers may direct, in such lawful trades, between safe port and/or ports within the Institute Warranty Limits - excluding Cuba and Israel. See also clause 32. _____ as the Charterers or their Agents shall direct, on the following conditions:

1. That the Owners shall provide and pay for all provisions, wages and consular shipping and discharging fees of the Crew; shall pay for the insurance of the vessel, also for all the cabin, deck, engine-room and other necessary stores, including boiler water and maintain her class and keep the vessel in a thoroughly efficient state in hull, machinery

and equipment for and during the service.

2. That the Charterers shall provide and pay for all the fuel except as otherwise agreed, Port Charges, Pilotages, Agencies, Commissions, Consular Charges (except those pertaining to the Crew), and all other such expenses except those before stated, but when the vessel puts into a port for causes for which vessel is responsible, then all such charges incurred shall be paid by the Owners.

Fumigations ordered because of illness of the crew to be for Owners account. See clause 30.

3. _____

4. That the Charterers shall pay for the use and hire of the said Vessel at the rate of 1.550.—including overtime _____ United States Currency per day commencing on and from the day of her delivery, as aforesaid, and at and after the same rate for any part of a day; hire to continue until the hour of the day of her re-delivery in like good order and

condition, ordinary wear and tear excepted, to the Owners (unless lost) at world wide within trading limits as per lines 32/33 _____ unless otherwise mutually agreed. Charterers are to give Owners not less than 21/14/7 days notice of vessels excepted date of re-delivery, and probable port.

ADDITIONAL CLAUSES TO CHARTER PARTY
M/S "IMBROS"
dated 7th June, 1973

32. Charterers' option of breaking warranties they paying the extra insurance premiums and in case of breaking warranties Charterers to pay also for eventual crew extra payments.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION

RUTH A. MOREWITZ,
Administratrix of the Estate
of Constantinos Stamatis,
deceased, etc.

Plaintiffs,

v.

IMBROS SHIPPING CO. LTD.,
et als.

Defendants,

DEPOSITION OF GEORGE TSOURINAKIS

This is a deposition of Mr. Tsourinakis taken pursuant to notice and Court order. This deposition was taken in Piraeus, 3 Akti Miaouli Str., on August 18th, 1977.

Mr. Crumpler : Let the record reflect that Mr. Tsourinakis was sworn by Mr. Crumpler. Would you state your full name and address please.

Mr. Tsourinakis : George Tsourinakis is, Afainss 4, Palleon, Psychikon.

Mr. C. : Age.

Mr. T. : 50.

Mr. C. : Please would you tell us if this is your only resident address at the moment.

Mr. T. : It is the only one, that I rent.

Mr. C. : Do you have any residences in any other country other than Greece.

Mr. T. : No.

Mr. C. : When and where were you born.

Mr. T. : April 1940 in Piraeus.

Mr. C. : What citizenship.

Mr. T. : Greek.

Mr. C. : Any other.

Mr. T. : No.

Mr. C. : Business address.

Mr. T. : Philellinon 11-15 moving to new offices shortly at Affendouli 2 Piraeus.

Mr. C. : What is your occupation.

Mr. T. : Ship owner.

Mr. C. : How long for.

Mr. T. : The company is my family business since I was born but I have been involved in the business since 1962.

Mr. C. : Referring you back to 1975 particularly December 1975 do you know of a vessel called the Imbros.

Mr. T. : The Imbros registered owner was the Imbros Shipping Co.

Mr. C. : You were the sole stockholder of the Imbros Shipping Co. and at that time was there a managing company of the Imbros.

Mr. T. : At that time we had GDSE company which we called managers but of course practically we were the management members. We can explain the relationship of the two companies later.

Mr. C. : Maybe it is better now. Would you tell us first how it was formed and who was responsible for its formation.

Mr. T. : I was.

Mr. C. : Could we get on to how it was formed and who was or is the owner of GDSE.

Mr. T. : I am.

Mr. C. : Now would you please tell us the purpose for the formation.

Mr. T. : Yes. Having more than on ship and hoping to have more in the future I felt that instead of having to refer to the various people with whom I must deal on each particular company separately and for Insurance purposes for various contracts, stores, provisions, oils, fuels and so on and for the purpose of running my shipping business in a more practical manner I have formed GDSE and we used to own ourselves the GDSE group of companies, there are certain advantages necessary to get somewhere and make a deal and present ourselves as a sole owner and as the owner of more than one vessel. If anyone asks who manages the vessel you can say I manage the vessel because this is a fact but I have to have

a name for presentation purposes for this reason I decided to form this company in 1972.

Mr. C. : How many employees did you have at then and now.

Mr. T. : I have now 26 or 27, but then perhaps a couple of people less because we had less ships at that time.

Mr. C. : Did you have offices in the U.S. or use an agent on a continuing a day to day basis.

Mr. T. : No because we never had business in the U.S. all of our vessels which called in the U.S. were on Time Charter.

Mr. C. : Did Imbros shipping have an office in the U.S.

Mr. T. : No.

Mr. C. : Do you own any property in the U.S.

Mr. T. : No.

Mr. C. : Do you have any bank accounts in the U.S.

Mr. T. : No.

Mr. C. : Does GDSE have any bank accounts in the U.S.

Mr. T. : No.

Mr. C. : Does GDSE own property in the U.S.

Mr. T. : No.

Mr. C. : As far as the details of the managing of the company who handles these details.

Mr. T. : Well my employees handle them under my direction but certain departments deal with financial claims, book-keeping, crew matters these are all people that I have chosen. Some things are handled by them following my wishes of course but some decisions are being made by me. They can make decisions over problems that are easily decided but all the major decisions are made by me.

Mr. C. : That was my next question are these any decisions made here that you are not

aware of or that you do not make yourself.

Mr. T. : I make every decision and my worry is to make as much profit as possible. GDSE is just the title company it is a convenience it is not for any practical reason but also it is not for any profit or loss or have any financial basis.

Mr. C. : Is there any arrangement between GDSE and any of the vessel owning companies.

Mr. T. : No because it would be possible to say that I in my own companies would assign commission to GDSE then it would look as though I put my hand from one pocket to another pocket since there is no tax reason in Greek law for shipping owners. They do not save any tax by presenting this to the tax people ship owners are taxed by GLT. Further there is no practical tax reason for me to do such a thing.

Mr. C. : In other words GDSE receives no cash other than the cash that can come as to

the salaries and expenses with managing of ships.

Mr. T. : We cannot say what GDSE receives. It is the policy that each particular company receives salaries and expenses related to its own needs.

Mr. C. : I was going to ask you that next, the expenses we are talking about salaries telex's they are split up and placed on the orders.

Mr. T. : We cannot charge directly to the vessel as such the salary rent and other items.

Mr. C. : In 1975 do you recall who the vessels and directors of GDSE were.

Mr. T. : The same as they were today.

Mr. C. : What is that. You mean the Cyprus companies.

Mr. T. : GDSE and Imbros were both Cyprus companies. I was the president and I think that Mr. Troianos was the secretary

because I had so many Cyprus companies due to the Greek government. I cannot have a Greek flag vessel owned by a Cyprus Company so I changed.

Mr. C. : What is the relationship between Contramar and GDSE.

Mr. T. : The continental lines were the owners of the vessel, the Imbros. It was called the TECUNUMAN.

Mr. C. : Who was responsible for the financing of it.

Mr. T. : My bank asked for three years time charter. You may not take it for three years at least, this time charter started in May 1973 and it was to finish in May 1976.

Mr. C. : Were there any other directors or shareholders other than these.

Mr. T. : No.

Mr. C. : Do you own any interest in Contramar.

Mr. T. : No.

Mr. C. : Have you ever.

Mr. T. : No.

Mr. C. : Was in other words the only relationship between Imbros and Continental Lines and GDSE was that it was being paid for and chartered by the same person up to its loss.

Mr. T. : Finance was received from Bates' Bank in London.

Mr. C. : Imbros was flying a Cyprus flag the entire time it was owned by you.

Mr. T. : Yes.

Mr. C. : Getting back to GDSE a second do you know how many shares there are.

Mr. T. : One hundred as far as I know or a thousand.

Mr. C. : All owned by you.

Mr. T. : One per cent is owned by my wife. It takes two people to make a company.

Mr. C. : Now to the accident. We have four Greek crewmen involved could you tell me when and where these men went on board the

vessel.

Mr. T. : Mr. Passalis went on board the vessel in Puerto Barrios on the 19th of September 1975.

Mr. C. : Where is Puerto Barrios.

Mr. T. : Somewhere in Mexico.

Mr. C. : It is not in the U.S.

Mr. T. : No. Then Mr. Stamatis in Santo Thomas Castilla on the 16th of September 1975, Mr. Markatos boarded in New Orleans 3rd October 1975 and Mr. Marangos in West Palm Beach on the 9th April 1975. This information was given to me by the Crew Dept.

Mr. C. : Being Greek Crew men where did lthey sign their employment contracts here in Piraeus.

Mr. T. : Usually a couple of days before their flight, yes.

Mr. C. : When they went on board the vessel would they have signed any articles of enrollment like Liberian Articles.

Mr. T. : I really do not know perhaps my crew department can tell you.

Mr. C. : There was also an Equadorian do you know where he joined the vessel.

Mr. T. : No.

Mr. C. : The record will show that there have been four of your vessels calling in Virginia in the last four years. The Imbros, the T. Alexandros, the Buenos Aires and the Rio de Janeiro.

Mr. T. : When these vessels called in these ports all reasons for this were the Time Charterers.

Mr. C. : What if anything would you have to do with picking out the ports that they went to.

Mr. T. : Nothing at all. The Time Charterer has the right to take the vessel to any ports of his choice as long as they are inside warrant limits and that they are not at war or not permitted to ship as of any nation

but we had no problem there.

Mr. C. : Who decided what cargoes were to loaded and where the cargoes were to be discharged.

Mr. T. : The Time Charterers were responsible for the vessels sub charter. I think the Alexandros and the Imbros have been going a few times sub chartered because the Time Charters have the right to do so.

Mr. C. : If any of these vessels were on sub charter would the sub charterer have the right to choose the port and the cargoe.

Mr. T. : Certainly.

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Docket No. 80-2156

In the Supreme Court of the United States

October Term, 1980

GENERAL DEVELOPMENT & SHIPPING
ENTERPRISES CO., LTD.
Petitioner,

V.

STEPHEN J. MOREWITZ,
etc., et al
Respondent

RESPONDENT'S BRIEF IN RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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INTRODUCTION

Appendix references that follow are to Petitioner's Appendix at the back of its Petition for Writ of Certiorari. The District Court decision of which G.D.S.E. complains (A5-13) was reached by District Judge John A. MacKenzie after a full dress evidentiary hearing in open court at which time each side had the opportunity to put in the record all evidence which it had supporting its position. (R. Vol. X, pages 14-15 and 39-51) Yet, none of the factual allegations made by Petitioner G.D.S.E. in its Petition for Writ of Certiorari give citations to the record and to a large extent G.D.S.E.'s said factual allegations are not supported by the record.

Moreover, although G.D.S.E.'s Appendix does not so indicate, the depositions of its attorney Domvros and its

ultimate owner Tsourinakis as printed in its Appendix are incomplete and in some instances inaccurate.

THE QUESTIONS PRESENTED

1. Whether G.D.S.E. had sufficient contacts with the State of Virginia so as to subject it constitutionally to the jurisdiction of the District Court below?

2. Whether under the facts of this case it was an abuse of discretion for the District Court below to exercise its discretionary jurisdiction and for the Court of Appeals below to affirm that exercise of discretionary jurisdiction?

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Exhibits Annexed to this Brief:

Exhibit "1" - Answers to Supplemental Interrogatories propounded to Defendant General Development & Shipping Enterprises Co., Ltd. sworn to by an officer of G.D.S.E. on December 22, 1976 and lodged by the Clerk of the District Court on January 3, 1977 I

Exhibit "2" - Memorandum Order of District Judge MacKenzie on February 7, 1977 in Morewitz, Adm. of Kannes v. Liberian EVGENIA G., (E.D. Va. C/A 76-131-NN) IV

Exhibit "3" - English translation of a portion of Decision No. 3295/1976 of the Court of Appeals of Athens, Greece IX

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Michalinos, Stamatios v. Naciente Compania Naviera, S.A. (Decision No. 998/1972 of Piraeus Court of First Instance, Appendix 13 in support of Pltf's. Brief of 2/6/78, R. Vol. XIII) 37,40

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Greek Law 551 (Agreed Ex. 22 of 5/22/79, R. Vol. XII) 35,36,37, 42

GENERAL MARITIME LAW CITED

The General Maritime Law 2

STATEMENT OF FACTS

On December 18, 1975, the SS IMBROS, sailing under the flag of Cyprus[1] was lost with all hands in the Atlantic Ocean off the East Coast of the United States in the area known as the Bermuda Triangle. She had been carrying a cargo of railroad ties loaded at Mobile, Alabama, to Port Cartier, Quebec, Canada. At the time of her loss the IMBROS had a multinational crew, including ten Greeks, two Hondurans, three Nigerians, two Pakistanis, one Egyptian and one Jordanian, but no Cypriots.

---

[1] The SS IMBROS had never been in a Cyprus port, but was frequently in U.S. ports. (Deft's. Ex. 1 of 2/7/78 and Agreed Ex. 75 of 5/22/79, page 19, R. Vol. XII)

Respondent, the Administrator d.b.n. of the estates of four Greek crewmen, two Honduran crewmen, three Nigerian crewmen and one Pakistani crewman, was the Plaintiff in three suits filed in the District Court below seeking damages for wrongful death under The Death on the High Seas Act, 46 U.S.C. 761, et seq., The Jones Act, 46 U.S.C. 688, 54 Stat. 1693, The General Maritime Law and/or Cyprus Law.[2] (Hereinafter Respondent will be referred to as "Plaintiff")

---

[2] CA-76-103-NN was filed 7/14/76 on behalf of the dependents of the four Greek seamen (NR 1). CA 77-63-NN and CA 77-95-NN were filed 6/29/77 and 8/31/77 respectively on behalf of the dependents of the two Honduran seamen (NR 308 & NR 327). Intervening Complaints in CA 76-103-NN on behalf of the dependents of the three Nigerians and the Pakistani were filed 1/9/78, 2/23/78 & 3/6/78. (NR 156, NR 174 and NR 181) The three cases were consolidated in 9/25/78. (NR 213)

Plaintiff's decedents Marangos and Markatos and nine other crewmen had been shipped aboard SS IMBROS in U.S. ports. Plaintiff's other decedents were employed in Honduras, Nigeria and Belgium.[3] (Agreed Ex. 4 of 5/22/79, R. Vol. XII)

Decedents resided in the countries of which they were citizens and left surviving dependent relatives in their respective countries. In addition, decedent Passalis is survived by his widow and infant child who are

---

[3] While the Greek seamen had previously signed individual employment contracts in Greece prior to being sent to join the M/V IMBROS in the Western Hemisphere, said contracts neither called for application of Greek Law nor recourse to Greek Courts, muchless did they call for exclusive jurisdiction by Greek Courts. (Deft's. Ex. 5 of 2/7/78, R. Vol. XII; Appendix to Pltf's. Brief of 2/6/78, App. 5, R. Vol. XIII.)

citizens and residents of Yugoslavia. (Pltf's. Ex. 14 of 1/3/80 and attached Exhibits A and C, R. Vol. XII)

The SS IMBROS was one of ten ships managed or operated by G.D.S.E., a Cyprus corporation, which has no office, place of business or employees in Cyprus. (P. 8 & 19 of Agreed Ex. 75 of 5/22/79, R. Vol. XII), G.D.S.E. had an office in Greece with 26 employees at the time M/V IMBROS was lost (A69), but now has no office in Greece or apparently anywhere else. (NR 273). G.D.S.E. and each of the ten ships was ultimately owned by George A. Tsourinakis, a Greek citizen and resident, whose present whereabouts are unknown. (NR 273)

On March 26, 1979, the District Court ruled that G.D.S.E. was the owner pro hac vice of SS IMBROS. (NR 276)

Imbros Shipping Co., Ltd., the record owner of SS IMBROS, was a mere paper corporation with no separate existence of its own. (NR 82, para. 2 of two page Affidavit) Indeed, Imbros Shipping never even had any meetings of its stockholders or directors during its entire existence. (Pltf's. Request for Admission 11/28/77, Requests 101 & 102, R. Vol. XIII)

The lack of a separate existence for Imbros Shipping Co., Ltd. and the other corporate record owners of Tsourinakis vessels is shown by Tsourinakis' testimony that after SS IMBROS was lost he collected its hull insurance and with the proceeds:

"I paid the loan balance of the vessel at that time. I paid various mortgage obligations and I think that I paid brokers. The balance I distributed to the other vessels at that time." (Agreed Ex. 75, of 5/22/79, p.27, R. Vol. XII)

G.D.S.E. only operated vessels ultimately owned by Tsourinakis. As stated by Tsourinakis in his deposition:

xxx Having more than one ship and hoping to have more in the future, I felt that instead of having to refer to the various people with whom I must deal on each particular company separately and for insurance purposes for various contracts stores provisions oils fuels and so on and for the purpose of presenting my whole fleet as a unit and for the purpose of running my shipping business in a more practical manner I have formed GDSE and we used to own ourselves the GDSE group of companies, there are certain advantages necessary to get somewhere and make a deal and present ourselves as a sole owner and as the owner of more than one vessel. xxx (A68)

xxx

> As management we do not have any other vessels apart from our own. (p. 8 of Agreed Ex. 75 of 5/22/79, R. Vol. XII)

Each of the Tsourinakis vessels was owned by a separate corporation which had no real function other than to hold title to the vessel. Each vessel was on long term time charter. (Pltf's. Ex. 23 & 24 of 2/7/78, R. Vol. XII.) No evidence was offered at the evidentiary hearing in the District Court on 2/7/78 that any record owner actively participated in the actual operation of the vessel to which it held title. G.D.S.E.'s allegations to the contrary at pages 6-7 of its Petition for Writ of Certiorari are unsupported by any evidence offered at the Evidentiary Hearing of 2/7/78. Cf. transcript of hearing of 2/7/78 (R. Vol. X)

G.D.S.E. can not point in the evidence to a single operating instruction sent by Imbros Shipping Co., Ltd. or by any other Tsourinakis record owner.

The evidence is that vessel crewing, repairing, maintenance, fuel supplies and operating instructions were handled by G.D.S.E. (NR 22, Requests 3 & 4, attached exhibits A & B; NR 82 para. 3 of two page Affidavit and first 8 pages of 9 page Affidavit; Requests 2, 3, 4, 6, 7, 8, 9, and 10 of NR 130 and attached Exhibits 1, 7, 8, 9 & 13, and Responses 2, 3, 4, 6, 7, 8, 9 and 10 of NR 138; A68-A72; Agreed Ex. 24 of 5/22/79 and Agreed Ex.75 of 5/22/79, p. 6-7, R. Vol. XII; Appendix to Pltf's. Brief of 2/6/78, Appendices 16 & 17, R. Vol. XIII; Requests 149-212 and 262-274 of Pltf's. Request for Admission of 11/28/77 and annexed exhibits, R. Vol. XIII; Pltf's. Ex. 2, 3, 7, and 8,

9, 10, 11 & 26 of 2/7/78, R. Vol. XII; Ex. D1-D14, Ex. F1-F5, Ex. H1-H9, Ex. J1-J8, Ex. L1-L21, Ex. N1-N8, and Ex. 13, 17, 18, 21, 22, 26-57, 76-80 attached to Pltf's. Request for Admission 11/28/77, R. Vol. XIII; Ex. 1-10 attached to Request for Admission 8/3/77, NR 114.)

In its Answers to Plaintiff's Supplemental Interrogatories of December 8, 1976 (NR 47), G.D.S.E. stated that it sent written instructions to the masters & Chief Engineers of its vessels (GDSE Ans. to Int. I(3) and V(3) contained in nine page Affidavit, NR 82) and that it received written communications from the Masters of its vessels concerning:

> xxx crew employment problems and maintenance and supplies (sic) matters. They were also reporting on claims anticipated and eventually on damages to the vessel and/or the cargo by third parties (eg. stevedores). From time to time they were sending us their

position. xxx (G.D.S.E. Ans to Interrogatory I.(5) contained in nine page Affidavit, NR 82)

and that:

> Every Master was preparing and sending us for checking and bookkeeping purposes a Master's General Account, every second month. (G.D.S.E. Ans. to Interrogatory I.(7) contained in nine page Affidavit, NR 82)

G.D.S.E. also stated it received written communications from the Chief Engineers of its vessels concerning:

> xxx the condition, as regards maintenance, of the engine room machinery and were eventually requesting certain spare parts. xxx (GDSE's Ans. to Interrogatory V.(5) contained in nine page Affidavit, NR 82)

Between June 29, 1973 and October 2, 1976, the SS IMBROS and three other vessels managed or operated by G.D.S.E. made 18 calls in Virginia, the vessels staying a total of 61 days. (NR 23 and

NR 27; NR 196 is undenied)[4]

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[4] In his Memorandum Order of 8/24/78, Judge MacKenzie pointed out that G.D.S.E. admitted that there were at least 17 G.D.S.E. vessel calls in Virginia and 45 days stay (A7). These figures were given by G.D.S.E. at p. 2 of its District Court Brief of 4/4/78, (R. Vol. XIII). Actually, Virginia calls were as follows: (NR 23 & NR 27; NR 196 is undenied)

Arrived	Sailed
Cyprus M/V IMBROS	
July 26, 1973	July 27, 1973
Jan. 27, 1974	Jan. 31, 1974
Mar. 29, 1974	Apr. 1, 1974
Greek SS RIO DE JANEIRO	
May 24, 1974	May 25, 1974
Aug 8, 1974	Aug 8, 1974
Jan 4, 1975	Jan 5, 1975
Mar 22, 1975	Mar 25, 1975
May 17, 1975	May 22, 1975
Aug 24, 1975	Aug 27, 1975
Dec. 7, 1975	Dec. 12, 1975
Feb. 24, 1976	Feb. 25, 1976
May 5, 1976	May 5, 1976
Jul. 8, 1976	Jul. 9, 1976
Oct. 1, 1976	Oct. 2, 1976
Greek SS BUENOS AIRES	
Dec. 3, 1975	Dec. 5, 1975
Cyprus SS ALEXANDROS T	
Jun. 29, 1973	Jul. 1, 1973
Feb. 19, 1976	Feb. 19, 1976
Jun. 26, 1976	Jul. 8, 1976

During the same period vessels operated by G.D.S.E. made 118 calls at other U.S. ports signing on numerous crewmen, undergoing repairs, purchasing food, fuel and other supplies and undergoing surveys. (Deft's. Ex. 1 of 2/7/78; Pltf. Exhibits of 2/7/78, Nos. 2, 3, 7, 8, 9, 22 and 26, Agreed Exhibits of 5/22/79, Nos. 8, 9, 24, 25, 28, 29, 30, 31, R. Vol. XII; Exhibits attached to Pltf's. Request for Admission of 11/28/77 - Ex. 38-51, & 56, 65-67, F-3, H-1, H-2, H-3, H-4, H-5, H-6, J-1, J-2, J-5, L-1, L-8, L-10, L-18, L-21, N-1, N-2, N-4; Appendix to Pltf's. Brief of 2/6/78 Appendices 16, 17, Appendix to Pltf's. Brief of 3/28/78, App. 23, Pltf's. Request for Admission Nos. 228, 229, 231, 232 of 11/28/77, R. Vol. XIII).

G.D.S.E.'s Port Captains periodically visited its vessels in U.S.

ports. (Ex. 13 attached to Pltf's. Request for Admission of 11/28/77, R. Vol. XIII)

The itineraries of its vessels produced by G.D.S.E. show that G.D.S.E. vessels spent about as much time in port in Virginia as any place else. (Deft's. Ex. 1 of 2/7/78 and Agreed Ex. 17 of 5/22/79, R. Vol. XII)

G.D.S.E.'s activities in Virginia included a variety of ancillary transactions.

Virginia agents were appointed for each vessel visit. (Pltf's. Requests for Admission of 11/28/77, Requests 186 thru 196, R. Vol. XIII; Ex. 1 attached to NR 130;

NR 196)[5]

In December 1975, the month the M/V IMBROS was lost, G.D.S.E. sent its Port Engineer, Ioannis Giannenakis, from Greece to Hampton Roads, Va., to perform tasks in connection with the redelivery of its vessel, SS BUENOS AIRES from its time charterers. (NR 86, NR 130, Ex. 1 of this Brief at P. I) Mr. Giannenakis was in Virginia from December 3, 1975, until December 29, 1975, according to G.D.S.E.'s 12/22/76 answer to Supplemental Interrogatories. (Ex. "1" attached to this Brief at P. I) Thus, on December 18, 1975,

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[5] Plaintiff's Request for Admission of 6/29/78 (NR 196) which is undenied by G.D.S.E., shows that the ALEXANDROS T. called at Hampton Roads, Va. for repairs on Feb. 19, 1976 and that G.D.S.E. engaged Ramsey Scarlett & Co., Inc. as its agent. In June 1976 when the ALEXANDROS T. again called at Hampton Roads, G.D.S.E. engaged W. J. Browning Co., Inc. as its agent. (NR 196)

at the very time M/V IMBROS was lost, G.D.S.E.'s Port Engineer was in Hampton Roads, Virginia, transacting its business in Virginia, if this sworn answer is correct. The dates of his Virginia stay are said to come from his passport. (G.D.S.E.'s Answers to Supplemental Interrogatories lodged 1/3/77, Ex. "1" of this Brief at P. I)

Moreover, G.D.S.E. stipulated before the District Court that:

> "xxx when Mr. Giannenakis visited Norfolk, Virginia, as a port engineer for General Development he received his instructions from General Development and all communications with respect to his activities were to General Development. (NR 86)

Operational instructions were sent to Virginia to the masters of M/V IMBROS and other G.D.S.E. vessels. (P1tf's. Request for Admission of 11/28/77, Requests 169, 170, 177, 178, 179, 186, 192,

194, 201, 261, 262, 263, 264, 267 and annexed Exhibits 15, 19, 20, 41, 50, 51, 57, 21LF, 26LF, 31LF, 40LF, E-1, E-4, G-5, and H-5; Ex. 1(a) of Exhibits in Support of Pltf's. Brief, etc. of 4/19/77, R. Vol. XIII).

Operational reports were sent from Virginia to G.D.S.E. by the Masters of its vessels. (Exhibits in Support of Pltf's. Brief, etc. of 4/19/77, Exhibits 1(d), 1(e), 1(f), 1(g), and 1(h); Pltf's. Request for Admission of 11/28/77, Requests 165, 189 and 191 and annexed Exhibits 47, 48, 49, 23LF, 24LF and 25LF, R. Vol. XIII)

SS IMBROS opened Articles in Virginia April 1, 1974, which were still in effect when it sank. (NR 22, Request 2; NR 23)

SS ALEXANDROS T. called at Hampton Roads, Va. for repairs on February

19, 1976 (NR 196) and passed its annual inspection of cargo gear at Norfolk, July 6, 1976. (Pltf's. Request for Admission of 11/28/77, Requests 189, 191, 192 and annexed Exhibits 24LF and 48, R. Vol. XIII)

On December 4, 1975, G.D.S.E. sent Lavino Shipping Co., (Lavino) Law Building, Norfolk, Virginia, a Telex reading:

> BY RECOMMENDATION OF MESSRS LONE STAR SHIPPING INC, HOUSTON, WE SHOULD LIKE TO APPOINT YOU AS OUR PROTECTING AGENTS AT NORFOLK. xxx (Ex. 1 attached to NR 130)

This agency continued until Lavino was paid on February 4, 1976. (NR 130, Requests 2, 3, and 4 and annexed Exhibit 1)

Acting as agents for G.D.S.E. at Hampton Roads, in December 1975, Lavino incurred charges for pilotage, line

handling, dockage, customs clearance, taxi hire, agency fee, sundries, ship's stores, medical expense, water, auto hiring, postage, teletypes and long distance telephone calls. (NR 130, Request 6 and annexed Exhibits 7 and 8)

Some idea of the activity of G.D.S.E. in Virginia is shown by a few of the cablegrams exchanged between the Master of the SS RIO DE JANEIRO and G.D.S.E. while SS RIO DE JANEIRO was in Virginia. (Ex. 1(a) through (h) attached to Pltf's. Brief of 4/19/77, R. Vol. XIII), Ex. 1(d) is quoted below.

On July 9, 1976, the Master of the SS RIO DE JANEIRO sent to G.D.S.E. a telex via the ship's Norfolk agent reading:

SAILED NORFOLK 8/7 ETA WILMINGTON 9/7 STAY ONE DAY COMPLETE DISCHARGING. LOADING FROM NEW ORLEANS ETA 15/7 BULK SODA ASH TO BAIRES. RECEIVED NORFOLK 50 PCS RINGS MAIN ENGINE AND 6 PCS SCAVENCIN (SIC) RINGS. WOODEN HATCH COVERS GENERATOR RINGS AND AUTO PILOT NOT RECEIVED.

RECEIVED 10867 DOLLARS. CHIEF OFFICER REQUESTS REPATRIATION FROM NEW ORLEANS SEND TICKET. NEW ORLEANS ADDRESS BIEHL AND COMPANY 416 COMMON STR. NEW ORLEANS 70130. TELPH. 581 7788 CABLE BIEHL

REASONS FOR DENYING THE WRIT

POINT I. THE DECISIONS BELOW DO NOT CONFLICT WITH WORLD-WIDE VOLKSWAGEN CORP. V. WOODSON, 444 U.S. 286 (1980) AND HANSON V. DENCKLA, 357 U.S. 235 (1958)

World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 100 S. Ct. 559 (1980) was a suit under Oklahoma's "long arm" statute and involved a "one shot" contact with the forum state, at best. There, the fortuitous circumstance that an automobile happened to suffer an accident while passing through Oklahoma in 1977, was held to be not a sufficient contact with Oklahoma to support service of process in a products liability action in Oklahoma against the New York auto wholesaler and the New York auto dealer

which had sold the auto in New York in 1976 to New York residents. However, the German auto manufacturer itself and the auto importer apparently had much more substantial contacts with Oklahoma because they remained as Defendants in the Oklahoma litigation after this Court held the New York dealer and the New York wholesaler not to be subject to suit in Oklahoma. Cf. Footnote 3 of World-Wide Volkswagen, supra.

The case sub judice involves a "doing business" statute[6], not a "long arm" statute. The test under a "doing

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[6] Former §8-60 of the Code of Virginia was in effect at the time process was served and provided as follows:

xxx

xxx If a foreign corporation doing business in this state or a foreign corporation transacting affairs in this State has no registered agent in this State, process or notice may be served xxx on the Clerk of the State Corporation Commission. xxx

business" statute is given in Hansen v. Denckla, 357 U.S. 235, 253; 78 S. Ct. 1228, 1239-1240, (1958), thus:

> xxx It is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws. International Shoe Co. v. State of Washington, 326 U.S. 310, 319, 66 S. Ct. 154, 159, 90 L. Ed. 95.

In Hansen, supra, no activities were conducted in Florida by the Defendant trust company, the only activities were by the trust settlor. Therefore, the Florida Court was held to be without jurisdiction over the Delaware trust company.

In the instant case, G.D.S.E. itself engaged in substantial activities in Virginia, the forum state. During the period July 26, 1973 to October 2, 1976, G.D.S.E. purposefully availed itself of

the privilege of conducting activities in Virginia by appointing Virginia steamship agents to act for it in Virginia, by securing repairs in Virginia, by sending replacement parts to its vessels in Virginia, by sending operating instructions to its masters via its Virginia steamship agents, by purchasing ship's stores and water in Virginia and by sending its own Port Engineer into Virginia to handle the redelivery of one of the vessels operated by it. During this period, SS IMBROS and three other G.D.S.E. vessels made 18 calls in Virginia staying a total of 61 days in Virginia ports. Cf. p. 8-11 and 13-19, supra.

The Virginia activities of a small corporation like G.D.S.E. set forth above constituted doing business in Virginia. Moore-McCormack Lines, Inc. v. Bunge, 307 F. 2d 910 (4 Cir. 1962).

These activities were an essential part of its management and operation of the vessels IMBROS, BUENOS AIRES, RIO DE JANEIRO and ALEXANDROS T. It was not necessary that G.D.S.E. have a place of business in Virginia or employees personally present in Virginia. Moore-McCormack Lines, Inc. v. Bunge, supra, 307 F. 2d at p. 915.

Moreover, even though SS IMBROS and all other G.D.S.E. vessels were time chartered to various charterers and the charters directed at what ports the vessels were to call and what cargo the vessels were to carry, the calls of G.D.S.E. vessels in Virginia constituted "doing business" in Virginia by G.D.S.E. Van Horn v. Waterman Steamship Corp., 71 F. Supp. 347 (E.D. Pa. 1944); Neset v. Christensen, 92 F. Supp. 78, 82 (E.D.N.Y. 1950); Arpad Szabo v. Smedvig Tankrederi

A.S., 95 F. Supp. 519, 522 (S.D.N.Y. 1951); Doris v. Boyd, Weir & Sewell, Inc., 1977 A.M.C. 405 (E.D. Va. 1977); Morewitz, Adm. of Kannes v. Liberian SS EVGENIA G., (E.D. Va. Civ. 76-131-NN, Decision of 2/7/77, Ex. 2 attached to this Brief at P. IV)

Judge MacKenzie, as the trier of fact, found on the evidence presented to him that G.D.S.E. had substantial contacts with Virginia. (A 7-8, 11-12)

Judge MacKenzie's decision was affirmed by a unanimous Court of Appeals. (A 1-4)

Although G.D.S.E. argues that its vessel calls in Virginia were insignificant, examination of the itineraries of its vessels shows that G.D.S.E. vessels spent almost as much time in port in Virginia as any place else. (Deft's.

Ex. 1 of 2/7/78, R. Vol. XII)[7]

Ratliff v. Cooper Laboratories, Inc., 444 F. 2d 745 (4 Cir. 1971) is distinguishable from the present case in that the Plaintiffs in that case were late in filing suit and were "forum shopping" for South Carolina's 6 year statute of limitations because the Plaintiffs were time barred in other states. Defendants were two very large drug manufacturers. One Defendant, Cooper Laboratories, merely solicited mail orders from South Carolina wholesalers and mailed promotional material

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[7] In this connection it should be noted that the itinerary of M/V BUENOS AIRES is not accurate, vessel calls at Santos, Montevideo and Buenos Aires between June 6, 1974 and July 19, 1974, being listed twice for an overstatement of 21 days of time spent in said ports.

to doctors. The other Defendant, Sterling Drug, maintained 5 detail men who lived in South Carolina and promoted its drugs by personal contact with doctors and drugstores in South Carolina and occasionally took orders. The record contained no figures of the amount of sales made in South Carolina nor of the percentage of time spent in South Carolina by the resident detail men in promoting drugs. Both companies were held not amenable to suit in South Carolina.

Here suit was instituted promptly. Petitioner is a small corporation and for its size its proven activities in Virginia were substantial.

In Grevas v. M/V OLYMPIC PEGASUS, 557 F. 2d 65, 68 (4 Cir. 1979), a single vessel call was held not to constitute fairly substantial contacts with Virginia. However, in the present

case there are eighteen vessel calls, plus ancilliary transactions.

Even if there actually were conflicts between earlier decisions of the Fourth Circuit Court of Appeals and its unanimous decision herein, that is an argument that G.D.S.E. should have addressed to the Fourth Circuit Court of Appeals. However, G.D.S.E. filed no Petition for Rehearing below.

POINT II. RETENTION OF DISCRETIONARY JURISDICTION IN THIS CASE IS GOVERNED BY GULF OIL CORP. V. GILBERT, 330 U.S. 501 (1947). THAT PORTION OF THE BELGENLAND, 114 U.S. 335 (1885) RELIED UPON BY G.D.S.E. IS OUT DATED DICTA CONCERNING SEAMEN'S WAGES.

Judge MacKenzie gave two reasons for exercising jurisdiction: (A12-A13)

1. G.D.S.E. had failed to persuade him of the availability to

Plaintiff of an alternative and adequate forum as required by Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508 (1947), the evidence being in conflict as to whether the families of any decedents, especially the six non Greeks, had the right of access to Greek Courts, and, if so, whether the non Greeks would have the right of access to the broader sweep of Greek Law.

2. Adjudication in Greece would not have any significant litigation advantages.

As stated by the Court of Appeals for the Fifth Circuit in the recent wrongful death case of Fisher v. AGIOS NICOLAOS V., 628 F. 2d 308, 312 (5 Cir. 1980):

> The fountainhead decision in determining application of the forum non conveniens principle is Gulf Oil corporation v. Gilbert, 330 U.S. 501, 67 S.

Ct. 839, 91 L. Ed. 1055 (1947), a non-maritime case. xxx

In Gulf Oil, supra, this Court discussed the entire question of forum non conveniens at length and pointed out:

> "xxx In all cases in which the doctrine of forum non conveniens comes into play, it presupposes at least two forums in which the defendant is amenable to process; the doctrine furnishes criteria for choice between them." (330 U.S. 506-507)

and:

> "xxx unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed". (330 U.S. 508)

G.D.S.E. relies upon out dated dicta concerning foreign seamen's wage claims in The BELGENLAND, 114 U.S. 335 (1885)[8] to argue that forum non conveniens

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[8] By statute this dicta now has no application to foreign seamen's claims for wages due in the United States, 46 U.S.C. 596-599.

applies only to claims for property damage in ship collision cases and not to claims for personal injury and wrongful death.

Fisher, supra, demolishes that argument in these words:- (628 F. 2d at 313-314)

> xxx defendants argue that the Belgenland standard for retaining jurisdiction ('unless special circumstances exist to show that justice would be subserved by declining it', 114 U.S. at 367, 5 S. Ct. at 865) applies only to collisions between foreign vessels and not to suits by a foreign seaman against a foreign vessel or owner - a distinction for which no citation is offered, which has never been noted in the doctrinal literature, and which has been ignored in decisions retaining jurisdiction over suits by foreign seamen against foreign ship parties.

Even if there were an actual conflict between the dicta in The Belgenland, supra, and the principles enunciated in Gulf Oil Corp., supra,

The Belgenland's 19th Century dicta has been superceded by this Court's 20th Century decision in Gulf Oil Corp. Much has changed since 1885 in the manner in which maritime commerce is carried on and in statutory and decisional law. Cf. 46 U.S.C. 596-599 and 688; Hellenic Lines, Ltd. v. Rhoditis, 398 U.S. 306 (1970) and its progeny.

Moreover, in the present case there is no internal economy of a ship to consider. The Cyprus SS IMBROS has sunk and there is no common country to which the multinational dependents of decedents might be relegated.[9]

Zouras v. Menelaus Shipping Co., 1 Cir., 336 F. 2d 209, and Anastasiadis v. SS LITTLE JOHN, 5 Cir., 346 F. 2d 281 are cited by G.D.S.E. in

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[9] There was not even one Cypriot in the crew.

support of its argument that jurisdiction should have been declined. However, in both Zouras and Anastasiadis there was no proof of regular visitation by the vessel at any United States port. In the present case we have a regularity of contacts of SS IMBROS and three other G.D.S.E. vessels with American ports and especially Virginia ports. Cf. pages 8-11 and 13-19, supra.

POINT III. THE DECISIONS BELOW DO NOT CONFLICT WITH LAURITZEN V. LARSEN, 345 U.S. 571 (1953) AND HELLENIC LINES V. RHODITIS, 398 U.S. 306 (1970)

G.D.S.E. argues that the exercise of discretionary jurisdiction is to be mechanically controlled by the same seven factors laid down by this Court in Lauritzen v. Larsen, 345 U.S. 571 (1953), plus the additional factor added

by Hellenic Lines v. Rhoditis, supra, 398 U.S. 306 (1970). However, decisional law is to the contrary. Fisher, supra, 628 F. 2d at 313; Gkiafis v. Greek SS YIOSONAS, 387 F. 2d 461, 462, (4 Cir. 1967).

Lauritzen itself in reversing the lower courts' determination that the American Jones Act rather than a foreign compensation law governed, indicated that a forum non conveniens consideration was not relevant in the determination of the choice of law, even though it "might be a persuasive argument for exercising discretionary jurisdiction to judge a controversy". 345 U.S. at 589-90, 73 S. Ct. 932.

Moreover, Plaintiff does not agree with G.D.S.E.'s analysis of the Lauritzen factors as applied to this case:-

1. Place of Wrongful Acts Causing Deaths - Mobile, Alabama, where G.D.S.E. negligently permitted SS IMBROS to put to sea in the unseaworthy conditions found by Judge MacKenzie to have caused her loss on the high seas. (NR 283)

2. Allegiance or Domicile of Crewmen who were Killed - Nigeria, Pakistan, Honduras and Greece, not merely Greece. Moreover, Chief Engineer Passalis, although a Greek himself, is survived by a Yugoslavian widow and infant daughter living in Yugoslavia, supra, P. 3-4.

3. Allegiance of Defendant G.D.S.E. - G.D.S.E. is a Cyprus corporation.

4. Places of Contracts Signed by the Seamen - Belgium, Nigeria, Honduras and Greece, not merely Greece. Cf. Agreed Ex. 4 of 5/22/79, R. Vol. XII.

5. Inacessibility of Foreign Forum - Greek Courts are not available. Cf. infra p. 35-43.

POINT IV. UNDER GREEK LAW, GREEK COURTS HAVE NO JURISDICTION OF THIS CASE.

Plaintiff's evidence below was that Greek Courts have no jurisdiction over claims by the non Greek surviving dependents who did not reside in Greece at the time of the accident and whose six non Greek decedents did not reside in Greece at the time of the accident and did not sign individual employment contracts in Greece.[10] Articles 5 and 6 of Greek Law

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[10] Although decedent Passalis was Greek, his widow and infant daughter were citizens and residents of Yugoslavia and so had no right to file suit in Greece. (Pltf's. Ex. 14 and Ex. C thereof, R. Vol. XII)

551, (Agreed Exhibit 22 of 5/22/79, R. Vol. XII) Cf. Decision No. 3295/1976 of the Court of Appeals of Athens, Greece. (Ex. 3 of this Brief at p. IX) which shows that the surviving dependents of six non Greek decedents in this case could not sue in Greece because they do not reside in Greece. Said the Athens Court of Appeals in its Decision No. 3295/1976:

> In this case the defendant xxx alleged that claimants had no legal right to file their complaint sub judice seeking recovery according to the Law 551/1914 xxx for the accidental death of their brother while serving as a deck boy aboard Defendants' ship because at all times, including the time of said accident, they were not Greek citizens and resided in Damiette, Egypt. xxx Therefore, for the reasons stated above, the Court below, should have agreed with the Defendant's contentions and rejected the complaint for failure to state a cause of action. xxx

Indeed, Plaintiff's evidence was that Greek Courts did not even have jurisdiction over claims by the Greek dependents of the Greek decedents, and that Greek Courts, in which the issue has been raised, have uniformly held that Greek Courts have no jurisdiction over claims, such as the cases sub judice, where the maritime accident takes place outside of Greece and where no Greek corporations are involved. Mareante Compania Naviera, S.A. v. Emmanuel Stephen Psarras (Decision No. 228/1972 of the Court of Appeals of Athens, Greece, Appendix 11 in Support of Pltf's. Brief of 2/6/78, R. Vol. XIII); Article 13 of Greek Law 551, (Agreed Ex. 22 of 5/22/79, R. Vol. XII); Stamatios Michali nos v. Naciente Compania Naviera, S.A. (Decision No. 998/1972 of Piraeus Court of First Instance, Appendix 13 in support

of Pltf's. Brief of 2/6/78, R. Vol. XIII); Dionysios Frangiskatos v. Konkar Maritime Enterprises, S.A. Panama, (Decision No. 1029/1973 of the Piraeus Court of First Instance, Appendix 14 in Support of Pltf's. Brief of 2/6/78, R. Vol. XIII).

The latest Greek appellate decision on this point is Mareante Compania Naviera, S.A. Panama vs. Emmanuel Stephen Psarras, supra. There, as did the Greek seamen in the case sub judice, the seaman signed an individual employment contract in Greece and then was sent abroad in order to be employed on a vessel outside of Greece. Psarras' vessel was the Greek flag SS AGIOS NIKOLAS, which was owned by Mareante, a Panamanian corporation. Said the Athens Court of Appeals: (Pages 2-3 of Appendix to Pltf's. District Court Brief of 2/6/78, R. Vol. XIII)

> xxx In his Complaint xxx Appellee, a resident of Dryopis of Kythnou, alleged that he was employed in Port Said on January 11, 1965, by the xxx Appellant corporation, which has its registered office in Panama, for service on the Greek flag vessel AGIOS NIKOLAS, as an Oiler; xxx that in October, 1965, while the ship was at sea en route to America, he slipped from a ladder, fell and suffered the bodily injuries mentioned in the Complaint; and that he seeks damages for the said maritime accident.
>
> On the facts alleged, no Greek Court has any jurisdiction whatsoever to deal with the suit in question, which is directed against a foreign company. (Emphasis supplied)

G.D.S.E. in its Petition cites Frangiskatos v. Konkar Maritime Enterprises, S.A., 353 F. Supp. 402 (S.D.N.Y. 1972), 471 F. 2d 714 (2 Cir. 1972) and Mihalinos v. Liberian SS TRIKALA, 342 F. Supp. 1237 (S.D. Ca. 1972) in support of its argument that Greek Courts would take jurisdiction of this case. Yet, when seamen Frangiskatos and Mihalinos

filed suit in Greece subsequent to these two decisions by American courts, the Greek Court held itself to be without jurisdiction. Michalinos v. Naciente Compania Naviera, S.A. Panama, (Decision No. 998/1972 of the Piraeus Court of First Instance), supra, and Frangiskatos v. Konkar Maritime Enterprises, S.A., Panama, (Decision No. 1029/1973 of the Piraeus Court of First Instance), supra.

Without citing a single statute, case or treatise to support his position (A50), Mr. Nicolas Domvros, the Greek attorney representing SS IMBROS' insurer (A-21), attempted to testify that a Greek Court would have jurisdiction of these claims. However, he was forced to acknowledge that Mareante, supra, was dismissed by the Athens Court of Appeals for lack of jurisdiction, even though the injured Plaintiff was a Greek

seaman injured outside of Greece aboard a Greek flag vessel. (A46-47) He was also forced to admit that unless the non Greek crewmen and their dependents were Greek residents and unless the non Greeks had signed employment contracts in Greece, no Greek Court would take jurisdiction of the wrongful death claims. (A49, A54-55; Agreed Ex. 76 of 5/22/79, p. 16-20, R. Vol. XII)

District Judge MacKenzie, as the finder of fact, did not accept Domvros' testimony as conclusive, stating: (A12)

> xxx The conflicting evidence concerning the adequacy of plaintiff's remedy in Greece, given the fact that the cause of action did not arise there and that defendant is not incorporated under Greek law, leaves us unconvinced that justice would be served by relinguishing jurisdiction. Crewmen, other than Greek Nationals, under the circumstances of this case, do not have access to the broader sweep of Greek law.

Indeed, G.D.S.E. admits at page 20. of its Petition that Domvros "did acknowledge that it was a possibility that the Greek Courts would decline jurisdiction in suits brought by non-Greeks".

Greek Law 551 (Agreed Ex. 22 of 5/22/79, R. Vol. XII) provides:

> Article 5 - xxx
> Aliens are entitled to the payment of compensation xxx only as long as they reside in Greece, and xxx only as long as they were residing in Greece at the time of the accident xxx
>
> Article 6 - In the event of death of the injured, the compensation in case 5 Article 3 devolves upon his relatives as follows: xxx d) xxx in the case of aliens that were not residing in Greece at the time of the accident, the available amount of the compensation is sought judicially or extra-judicially by the Minister of National Economy and is deposited at the National Bank of Greece in an interest bearing account and to the credit of the "Workers Care Fund". xxx

> Article 13 - The lawsuits resulting from the provisions of the present law, regardless of the amount, are under the competence of the Justice of the Peace of the place of residence of the defendant or of the place where the accident occurred.

POINT V. G.D.S.E.'s ALLEGATION THAT THE FAMILIES OF PLAINTIFF'S FOUR GREEK DECEDENTS ACTUALLY PURSUED THEIR WRONGFUL DEATH CLAIMS IN GREECE IS UNFOUNDED.

At Page 23 of its Petition, G.D.S.E. states:

> The last point concerns the claims of the Greek families. Wholly unexplained is the district court's failure to decline jurisdiction as to the Greek seamen whose claims were pursued by their families living in Greece. Certainly they have access to Greek courts.

There is not a scintilla of evidence to support G.D.S.E.'s allegations that the families of Plaintiff's four Greek decedents pursued their wrongful death claims in Greece.

POINT VI. EVEN IF A GREEK COURT WERE TO HAVE JURISDICTION, ADJUDICATION IN GREECE WOULD NOT HAVE HAD ANY SIGNIFICANT LITAGATIVE ADVANTAGES.

Adjudication in Greece would not have had any significant litigative advantages. Wherever this case might have been tried, it would have had to be tried largely on documents and depositions. Cf. Lascaratos v. OLYMPIC FLAME, (E.D. Pa.) 227 F. Supp. 161, 163 (E.D. Pa. 1964); Kontos v. SS SOPHIE C., 184 F. Supp. 835, 837 (E.D. Pa. 1960) approved, but vacated on other grounds 288 F. 2d 437 (3 Cir. 1961); Karros v. SS LYRIC, 247 F. Supp. 554, 551 (E.D. Va. 1965).

From March 31, 1974, until her loss, the only surveys of the hull, machinery and wireless of SS IMBROS took place in American ports. The marine surveyors performing said surveys were U.S. citizens and residents. Stowage

of cargo at Mobile, Alabama, for the last voyage was under the inspection of a marine surveyor, who is a U.S. citizen and resident. At the time of the hearing of 2/7/78, these marine surveyors were available to testify in the United States at any liability trial as to the physical condition of M/V IMBROS and the details of her loading. (Agreed Ex. 8, 9, 77, 78 and 81 of 5/22/79, R. Vol. XII; Appendix 16 & 17 of Pltf's. Brief of 2/6/78, R. Vol. XIII; and Pltf's. Request for Admission of 11/23/77, Requests 228-233 and annexed Exhibits 63, 64, 65, 66, 67, R. Vol. XIII)

In fact, when trial on liability took place in the District Court below on 5/22/79, the reports of these American marine surveyors were placed in evidence as Agreed Exhibits 8, 9, 77, 78 and 81 (R. Vol. XII), thus eliminating the need to have each surveyor testify in person.

At the evidentiary hearing on jurisdiction on 2/7/78, the Bill of Lading, the loading plan for the fatal voyage and the Mobile, Alabama Port Log and Statement of Facts were submitted in evidence as Pltf's. Ex. 12 (R. Vol. XII)[11]. The agents who handled the vessel at Mobile, Alabama, and the stevedore personnel who loaded her at Mobile, Alabama, were available to testify if necessary at a trial on liability.

Likewise, the weather records maintained by the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce were then available to be offered in evidence at a trial on liability. (Request 257 of Requests for Admission of 11/23/77 and annexed Exhibits O(a)-O(q), R. Vol. XIII; Agreed Ex. 2 of 5/22/79, R. Vol. XII)

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[11] These documents are Agreed Ex. 5 & 6 at the trial on liability. (R. Vol. XII)

Also available for evidence at the trial were U.S. Coast Guard Search & Rescue Records (Agreed Ex. 1 of 5/22/79, R. Vol. XII) and information from the U.S. Coast Guard explaining its AMVER Plot and AMVER Directory. (Agreed Ex. 26 of 5/22/79, R. Vol. XII; App. 2 & 3 of Pltf's. Brief of 2/6/78, R. Vol. XIII)

Almost a year before Judge MacKenzie handed down his decision of August 24, 1978 (A5-13), Plaintiff had already taken a de bene esse deposition on September 1, 1977, from Dimitra Zorba, the Radio Officer aboard the M/V IMBROS from December 1974 until December 1975. (Agreed Ex. 70 of 5/22/79, R. Vol. XII) Cf. District Court Docket Entry 9/20/77.

G.D.S.E.'s Petition does not even attempt to show that there would be any significant litigative advantages to trial in Greece.

Instead, G.D.S.E. merely cites Fitzgerald v. the CHRYSSI P. GOULANDRIS, 582 F. 2d 312 (4th Cir. 1978), Morewitz v. Andros Compania Maritima, S.A., 614 F. 2d 379 (4th Cir. 1980), and Bekris v. Greek M/V ARISTOTELES, 437 F. 2d 219 (4th Cir. 1971) and alleges that there is a conflict between these decisions and the case sub judice.

Bekris and Morewitz involved Greek flag vessels and in all three cases there were individual employment contracts signed in Greece calling for exclusive jurisdiction of Greek Courts and application of Greek Law. Here, the six non Greeks signed no individual employment contracts in Greece and the contracts signed in Greece by the four Greek seamen have no provisions calling either for exclusive jurisdiction of any Greek Court or for application of Greek Law.

(Appendix 5 to Pltf's. Brief of 2/6/78, R. Vol. XIII)

This case differs from Fitzgerald, Morewitz, and Bekris in that each of those cases involved only Greek seamen whom the District Court found to have adequate remedies in Greece on the evidence presented in each of those cases. Here, Judge MacKenzie found strong evidence that the six non Greek families had no adequate remedies under Greek Law, especially as to its broader sweep. (A-12) Moreover, Judge MacKenzie found the evidence to be conflicting as to whether the four Greek families actually had adequate remedies under Greek Law. (A-12)

What has happened is that the Fourth Circuit upheld the District Court's discretionary determination to decline jurisdiction in Fitzgerald,

Morewitz and Bekris and upheld the District Court's discretionary determination to exercise jurisdiction in this case. Thus, these decisions are not in conflict.

In the words of Fisher, supra, 628 F. 2d at 315:

> xxx (both) the district court's rejection of a forum non conveniens plea and its retention of jurisdiction will not be disturbed on review in the absence of a clear abuse of its discretion in the matter.

POINT VII. NUNEZ-LOZANO VS. REDEREI, 634 F. 2d 135 (5 CIR. 1980) IS NOT IN CONFLICT WITH THE DECISIONS BELOW.

Nunez-Lozano v. Rederei, 634 F. 2d 135 (5 Cir. 1980), did not involve a "flag of convenience" vessel like the Cyprus M/V IMBROS, but a bona fide Norwegian flag vessel manned almost exclusively by Norwegians. The shipowner was Norwegian and had its base of

operations in Norway. The seaman had collected Norwegian Workmen's Compensation.

The Cyprus M/V IMBROS was a flag of convenience vessel with no Cyprus base of operations and was ultimately owned by a Greek citizen. The crew was multinational with not one Cypriot in the crew. It was never in a Cyprus port, but for more than 26 months before its loss was largely engaged in voyages beginning and/or ending in the United States. (Deft's. Ex. 1 of 2/7/78, R. Vol. XII)

In any event, in Nunez-Lozano the District Judge declined to exercise discretionary jurisdiction and his action was upheld by the Court of Appeals for the Fifth Circuit.

Here, District Judge MacKenzie exercised discretionary jurisdiction and

his exercise of his discretion was affirmed by the Court of Appeals for the Fourth Circuit.

CONCLUSION

The facts found by Judge MacKenzie are supported by substantial evidence. Where G.D.S.E. disagrees with these findings, Judge MacKenzie as the trier of fact chose to believe the evidence offered by Plaintiff and did not give credence to what evidence was offered by G.D.S.E. Judge MacKenzie's factual findings were affirmed by a unanimous Court of Appeals and should not be disturbed.

Based on the facts found by him, Judge MacKenzie correctly concluded that valid service of process had been obtained upon G.D.S.E. under former §8-60 of the Code of Virginia and that forum non

conveniens did not apply because G.D.S.E. had not proved the availability of an alternative and adequate forum as required by the teachings of Gulf Oil Corp. v. Gilbert, 330 U.S. at 508. This was no abuse of discretion.

After discretionary jurisdiction had been assumed by the District Court, it proceeded to conduct two trials - first on liability and then on damages. It would be harsh and unjust to require the families of decedents to begin litigation all over again at this late date, especially since G.D.S.E. has now gone out of business. (NR 273)

The judgment below should be affirmed.

Respectfully submitted

Burt M. Morewitz

Burt M. Morewitz
Of Attorneys for Respondent

EXHIBIT "1"

ANSWERS TO SUPPLEMENTAL INTERROGATORIES PROPOUNDED TO DEFENDANT GENERAL DEVELOPMENT AND SHIPPING ENTERPRISES CO., LTD., SWORN TO DECEMBER 22, 1976, IN THE CASE OF MOREWITZ, ADM. V. IMBROS SHIPPING CO., LTD., ETC., ET ALS (E.D. Va., C/A 76-103-NN)

Now comes the defendant, and answers the plaintiff's Interrogatories as follows:

1. IOANNIS ANDREOU GIANNENAKIS, Greek citizen, resident of 108 Metamorphosseos Street, Moschaton, Athens-Greece.

2. Mr. Giannenakis visited Hampton Roads and Norfolk-Virginia on December 1975, namely from the 3rd till the 29th attending redelivery from time-charter of m/v "BUENOS AIRES" on owners' behalf. Before that time Giannenakis was at Houston, Texas between the 12th and the 20th August 1975 attending drydocking of the same m/v "BUENOS AIRES" on owners' behalf.

3. As per his passport, Giannenakis arrived at Norfolk on the 3rd December 1975 and left on the 29th December 1975.

4. Mr. Ioannis Andreou Giannenakis has had no trouble and met no problem with the United States Immigration and Naturalization Service during his aforesaid visit to Norfolk Virginia.

I, THEODOROS MORAITIS of II-I5 Filellinon street, Piraeus, Greece, under my capacity as Assistant Manager of General Development and Shipping Enterprises Co., Ltd.,

MAKE OATH

and state that the matters deposed to hereinabove are within my knowledge and information and to the best of my belief are true.

/S/ (Illegible)
THEODOROS MORAITIS

SWORN AT

This 22nd day of

December 1976

REPUBLIC OF GREECE)
PROVINCE OF ATTICA)
CITY OF ATHENS) SS:
EMBASSY OF THE)
UNITED STATES OF AMERICA BEFORE

SEAL

Subscribed and sworn to before me, the undersigned consular officer of the United States of America at Athens, Greece, duly commissioned and qualified, this 22nd day of December, 1976

/S/ K. F. Herbert
KEVIN F. HERBERT
Vice Consul of the United States of America

EXHIBIT "2"

MEMORANDUM ORDER DATED FEBRUARY 7, 1977, IN THE CASE OF MOREWITZ, ADM. OF THE ESTATE OF KANNES, DEC'D. V. LIBERIAN EVGENIA G., (E.D. Va. C/A 76-131-NN)

The plaintiff obtained a purported service of process upon the person of the defendant, Andros Compania Maritima, S.A. (Andros) by serving the Clerk of the State Corporation Commission of Virginia, pursuant to the Code of Virginia §§ 8-60 and 13.1-119 (1950), as amended). Defendant Andros has filed a motion to quash this service of process. We find that, at all relevant times, Andros was doing business or transacting affairs in Virginia within the meaning of both Virginia and federal law, and we therefore conclude that this service was valid, and that this Court has jurisdiction over the person of Andros.

As alleged in the complaint, Kannes died at sea on November 26, 1976, as a result of the unseaworthiness of the vessel upon which he was employed. Certain wage claims under 46 U.S.C. §§ 596-599 are also alleged.

Plaintiff has not alleged that any of Andros' business acts within Virginia gives rise to the liabilities asserted in this suit. Nor is the contention advanced that Andros is amenable to service of process under Virginia's "long-arm" statute, Code of Virginia §§ 8-81.1 et seq.

Under § 8-60, as opposed to §§ 8-81.1 et seq, our jurisdiction over the person of the defendant is not dependent on the existence of an act within Virginia which gives rise to the liability asserted. Although such an act is a significant factor, especially when

defendant's contacts with Virginia are minimal, it is sufficient under § 8-60 that defendant conducts substantial business within this forum. See International Shoe Company v. State of Washington, 326 U.S. 310, 66 S. Ct. 154 (1945); Moore-McCormack Lines, Inc. v. Bunge Corp., 307 F. 2d 910 (4th Cir. 1962); Goldrick v. D.M. Picton Co., 56 F.R.D. 639 (E.D. Va. 1971); Pappas v. Steamship Aristidis, 240 F. Supp. 692 (E.D. Va. 1965).

Andros has admitted in its answer to plaintiff's Interrogatory XXI(E)(6) that during each of the last five years Andros has "managed" an average of about twenty vessels that are in and out of the port of Hampton Roads, Virginia. In addition, Andros has admitted, in its answer to Interrogatory XXXII, that one of its employees was

"attending to the business of Andros on a vessel other than the EVGENIA G." in Norfolk, Virginia from August 7-12, 1974, and that another employee was engaged likewise from April 7-9, 1975. We find on the basis of these admissions that Andros has conducted substantial business within this forum.

Andros contends that, even if the quantity of its business transactions with the forum are sufficient to justify the in personam jurisdiction of this court, the quality of those transactions is not. The Court of Appeals for the Fourth Circuit in Gkiafis v. Steamship Yiosonas, 342 F. 2d 546, 556 (1965) defined "quality" of the contacts as "their importance to the corporation and their commercial impact on the state". Here, Andros has admitted that twenty of the sixty-three vessels that

it manages have been in and out of this forum during each of the last five years. These vessels mostly carried a cargo of oil to the port of Hampton Roads. We find such contacts to be of the type that is of large commercial impact to both Andros and Virginia. The traditional notions of fair play and substantial justice are not offended by our exercise of jurisdiction over the person of Andros.

For the reasons stated herein, it is ORDERED that the motion of the defendant Andros Compania Maritima, S.A. is DENIED.

/S/ John A. MacKenzie
United States District Judge

Norfolk, Virginia
February 7, 1977

Copies to counsel of record 2/7/77

SMB

EXHIBIT "3"

ENGLISH TRANSLATION OF A PORTION OF DECISION NO. 3295/1976 OF THE COURT OF APPEALS OF ATHENS, GREECE

In the Court below, Claimants xxx sought xxx indemnification because of the death of their brother in an accident occurring during his employment as deck boy aboard Defendant's ship, on which he was serving under a Contract of Employment, details of which are set forth in their complaint. Defendant company appeals from the decision of the Court of First Instance, which partially accepted the complaint, and seeks to reverse said decision xxx.

Aliens (Non Greeks) are entitled to recover under (Greek) Law 551/1914 not unconditionally like Greeks, but only if they were residing in Greece at the time of the accident. This is clearly shown by Paragraph 2 of Section 5 and sub paragraph 2(d) of

Section 6. of Law 551/1914 as codified by Royal Decree of July 20/August 25/1920, which became applicable in seamen's cases after the repeal of Section I, §2, of Law 551/1914 by Law 2193/1920 and was continued by Section 38 of the Introductory Law of the (Greek) Civil Code. Otherwise the recovery is sought by the Minister of National Economy by legal action or out of court settlement and under section 2, §4 of Law 5204 of May 28, 1971 it is collected in favour of the (Greek) Seaman's Home (Ergatiki Estia), a public entity. Aliens (Non Greeks) are entitled to the benefits of said law without the above condition only if there is a treaty between the alien's country

and Greece, or if the law of the alien's country provides for an unconditional protection of foreigners working in that country in the above meaning (Section 5, Paragraph 2 of Law 551/1914 combined with Section 1 of Legislative Decree of January 24, 1923 - Christos Economou, Law of Labor Accidents and Occupational Diseases, §§450 and 710, pages 558, and 886 respectively, A. Toussis Labor Law, volume 2 §92/D & E, pages particularly 63 & 66, see also Emilia Beder Manher-Geroussis, Armenopoulos Magazine, volume 27 pages 157 et seq.)

In this case the defendant xxx alleged that claimants had no legal right to file their complaint sub judice seeking recovery according to the Law 551/1914 and particularly a recovery consisting of 5 years wages for the accidental death

of their brother while serving as a deck boy aboard Defendants' ship because at all times, including the time of said accident, they were not Greek citizens and resided in Damiette, Egypt. Claimants have not disputed this allegation or alleged that there is any treaty between Greece and Egypt recognizing similar rights in favour of Greek persons working in Egypt or that the law of Egypt provides unconditional protection of foreigners working in Egypt. Therefore, for the reasons stated above, the Court below, should have agreed with the Defendant's contentions and rejected the complaint for failure to state a cause of action. As a result, xxx the decision must therefore be reversed insofar as it awards to R.S. and S.S., the two first claimants 106,500 drachmas each.

Furthermore, xxx Claimants' contention that aforementioned provision of Law 551/1915 was repealed by non use is overruled because according to Section 2 of the (Greek) Civil Code, the Law maintains its force as long as another law does not repeal it expressly or impliedly and it is never repealed by non use. Such a manner of repeal of a law is not recognized by the (Greek) Civil Code. Only a provisional Law is automatically repealed - such a law is repealed by the elapse of the time provided in it or by accomplishment of its aim, which is not the case here. (G. Ballis, General Principles, 7th Edition §6 page 15, G. Valintas Interpretation of the (Greek) Civil Code under Section 2, page 12, Athens Court of Appeal of Athens 3253/1956 magazine, Law Archives 40).